

MILLENNIUM CHALLENGE COMPACT

BETWEEN

THE UNITED STATES OF AMERICA

ACTING THROUGH

THE MILLENNIUM CHALLENGE CORPORATION

AND

THE REPUBLIC OF NAMIBIA

MILLENNIUM CHALLENGE COMPACT

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MILLENNIUM CHALLENGE COMPACT

PREAMBLE

This MILLENNIUM CHALLENGE COMPACT (this "*Compact*") is between the United States of America, acting through the Millennium Challenge Corporation, a United States government corporation ("*MCC*"), and the Republic of Namibia ("*Namibia*") (individually a "*Party*" and collectively, the "*Parties*").

Recalling that Namibia consulted with the private sector and civil society of the Republic of Namibia to determine the priorities for the use of Millennium Challenge Account assistance and developed and submitted to MCC a proposal focused on poverty reduction through improving human resources, capacities and skills, enhancing public and private sector investment in tourism and increasing agricultural productivity; and

Recognizing that MCC wishes to help the Republic of Namibia implement a program to achieve the goal and objectives described herein (the "*Program*");

Capitalized terms used herein shall have the meanings specified in Annex V hereto.

The Parties hereby agree as follows:

ARTICLE 1.

GOAL AND OBJECTIVES

Section 1.1 Compact Goal. The goal of this Compact is to reduce poverty in the Republic of Namibia through economic growth (the "*Compact Goal*").

Section 1.2 Program Objective. The objective of the Program (as further described in Annex I) (the "*Program Objective*") is to increase the competence of the Namibian workforce (knowledge, skills and attitude), and increase the productivity of agricultural and non-agricultural enterprises in rural areas.

Section 1.3 Project Objectives. The objectives of the Projects (as further described in Annex I) (each a "*Project Objective*" and collectively, the "*Project Objectives*") are:

(a) The objective of the Education Project is to improve the quality of the workforce in Namibia by enhancing the equity and effectiveness of basic, vocational, and tertiary education and of technical skills.

(b) The objective of the Tourism Project is to grow the Namibian tourism industry with explicit targeting of income streams to conservancy households.

(c) The objective of the Agriculture Project is to increase the total value added from livestock in the northern communal areas of the Republic of Namibia and to increase income from indigenous natural products accruing to the poor nationwide.

ARTICLE 2. FUNDING AND RESOURCES

Section 2.1 Program Funding.

MCC hereby grants to Namibia, under the terms of this Compact, an amount not to exceed Three Hundred Four Million Four Hundred Seventy-Seven Thousand Eight Hundred Sixteen United States Dollars (US\$304,477,816) ("**Program Funding**") for use by Namibia to implement the Program. The allocation of Program Funding is generally described in Annex II to this Compact.

Section 2.2 Compact Implementation Funding.

(a) MCC hereby grants to Namibia, under the terms of this Compact, in addition to the Program Funding described in Section 2.1, an amount not to exceed Nineteen Million Five Hundred Forty-Three Thousand One Hundred Seventy-Five United States Dollars (US\$19,543,175) ("**Compact Implementation Funding**") under Section 609(g) of the Millennium Challenge Act of 2003, as amended (the "**MCA Act**"), for use by Namibia for the following purposes:

- (i) fiscal and procurement administration activities and costs (including, for example, costs related to standby agents procured by MCC);
- (ii) administrative activities including start-up costs such as staff salaries and administrative support expenses such as rent, computers and other information technology or capital equipment;
- (iii) baseline surveys for monitoring and evaluation;
- (iv) additional work for feasibility studies and development of technical scopes; and
- (v) other Compact implementation activities approved by MCC.

The allocation of Compact Implementation Funding is generally described in Annex II to this Compact.

(b) Notwithstanding Section 7.3 of this Compact, as of the date that this Compact is signed by MCC and Namibia (i) this Section 2.2 shall be effective, and (ii) any other provisions of this Compact applicable to Compact Implementation Funding shall be effective for purposes of Compact Implementation Funding only, *provided that* the MCA-Namibia Procurement Rules will only be effective after ratification of this Compact by Namibia.

(c) Each Disbursement (as defined in Section 2.4) of Compact Implementation Funding shall be subject to satisfaction of the conditions to such disbursement as set forth on Annex IV.

(d) If, after the first anniversary of this Compact entering into force, MCC determines that the full amount of Compact Implementation Funding under Section 2.2(a) of this Compact exceeds the amount which reasonably can be utilized for the purposes and uses set forth in

Section 2.2(a) of this Compact. MCC, by written notice to Namibia, may withdraw the excess amount, thereby reducing the amount of the Compact Implementation Funding as set forth in Section 2.2(a) (such excess, the "*Excess CIF Amount*"). In such event, the amount of Compact Implementation Funding granted to Namibia under Section 2.2(a) will be reduced by the Excess CIF Amount, and MCC will have no further obligations with respect to such Excess CIF Amount.

(e) MCC, at MCC's option by written notice to Namibia, may elect to grant to Namibia an amount equal to all or a portion of such Excess CIF Amount as an increase in the Program Funding, and such additional Program Funding will be subject to the terms and conditions of this Compact applicable to Program Funding.

Section 2.3 MCC Funding.

Program Funding and Compact Implementation Funding are collectively referred to in this Compact as "*MCC Funding*."

Section 2.4 Disbursement.

In accordance with this Compact and the Program Implementation Agreement (as defined in Section 3.1), MCC will disburse MCC Funding for expenditures incurred in furtherance of the Program (each instance, a "*Disbursement*"). Subject to the satisfaction of all applicable conditions, the proceeds of such Disbursements will be made available to Namibia, at MCC's sole election, by (a) deposit to one or more bank accounts established by Namibia and acceptable to MCC (each, a "*Permitted Account*") or (b) direct payment to the relevant provider of goods, works or services in connection with the implementation of the Program. MCC Funding may be expended only to cover Program expenditures as provided in this Compact and the Program Implementation Agreement.

Section 2.5 Interest. Namibia will pay to MCC any interest or other earnings that accrue on MCC Funding in accordance with the Program Implementation Agreement (whether by directing such payments to a bank account outside Namibia that MCC may from time to time indicate or as otherwise directed by MCC).

Section 2.6 Namibia Resources: Budget.

(a) In accordance with Section 609(b)(2) of the MCA Act, Namibia will make a contribution towards meeting the Objectives of this Compact. Annex II describes such contribution in more detail. In addition, Namibia will provide all funds and other resources, and will take all actions, that are necessary to carry out Namibia's responsibilities and obligations under this Compact.

(b) Namibia will use its best efforts to ensure that all MCC Funding it receives or is projected to receive in each of its fiscal years is fully accounted for in its annual budget on a multi-year basis.

(c) Namibia will not reduce the normal and expected resources that it would otherwise receive or budget from sources other than MCC for the activities contemplated under this Compact and the Program.

(d) Unless Namibia discloses otherwise to MCC in writing, MCC Funding will be in addition to the resources that Namibia would otherwise receive or budget for the activities. ~~Section 2.7 Limitations on the Use of MCC Funding.~~ Namibia will ensure that MCC Funding will not be used for any purpose that would violate United States law or policy, as specified in this Compact or as further notified to Namibia in writing or by posting on the MCC website at www.mcc.gov (the "**MCC Website**"), including but not limited to the following purposes:

(a) for assistance to, or training of, the military, police, militia, national guard or other quasi-military organization or unit;

(b) for any activity that is likely to cause a substantial loss of United States jobs or a substantial displacement of United States production;

(c) to undertake, fund or otherwise support any activity that is likely to cause a significant environmental, health, or safety hazard, as further described in MCC's Environmental Guidelines posted on the MCC Website (the "**MCC Environmental Guidelines**"); or

(d) to pay for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions, to pay for the performance of involuntary sterilizations as a method of family planning or to coerce or provide any financial incentive to any person to undergo sterilizations or to pay for any biomedical research which relates, in whole or in part, to methods of, or the performance of, abortions or involuntary sterilization as a means of family planning.

Section 2.8 Taxes.

(a) Unless the Parties otherwise specifically agree in writing, and subject to the provisions of Sections 2.8(b)(ii) and (iii) and 2.8(c), Namibia will ensure that each of the following is free from the payment of any existing or future taxes, duties, levies, contributions or other similar charges ("**Taxes**") of or in Namibia (including any such Taxes imposed by a national, regional, local or other governmental or taxing authority of or in Namibia): (i) the Program; (ii) MCC Funding; (iii) interest or earnings on MCC Funding; (iv) any Project or activity implemented under the Program; (v) MCA-Namibia (as defined in Section 3.2(b)); (vi) goods, works, services, technology and other assets and activities under the Program or any Project; (vii) persons and entities that provide such goods, works, services, technology and assets or perform such activities; and (viii) income, profits and payments with respect thereto. The Parties acknowledge and agree that the foregoing includes, *inter alia*, value added and other transfer taxes, profit and income taxes, property and *ad valorem* taxes, import and export duties and taxes (including for goods imported and re-exported for personal use), withholding taxes, payroll taxes, and social security and social insurance contributions.

(b) The GRN and the USG may, at MCC's discretion, enter into one or more agreements setting forth the mechanisms for implementing this Section 2.8, including (i) waivers of certain filing and compliance requirements relating to Taxes, (ii) an agreement on exceptions to Section 2.8(a) above for fees or charges for services that are generally applicable in Namibia, reasonable in amount and imposed on a non-discriminatory basis, and (iii) one or more mechanisms to implement the provisions of Section 2.8(a) with respect to all or any of the Taxes that would otherwise be applicable, which may include exemptions from payment of such Taxes

that have been granted in accordance with applicable law, refund or reimbursement of such Taxes by the Namibia to MCC or to the taxpayer, or payment by Namibia to MCA-Namibia or MCC, for the benefit of the Program, of an agreed amount representing any collectible Taxes on the items described in Section 2.8(a).

(c) The provisions of Section 2.8(a) shall not apply to income Taxes on and contributions with respect to individuals who are nationals of Namibia and individuals who are ordinarily resident in Namibia, *provided that* such Taxes and contributions are equitable and are generally applicable to all nationals in Namibia.

(d) If a Tax has been paid contrary to the requirements of this Section 2.8 or any agreement entered into pursuant to this Section 2.8, Namibia will refund promptly to MCC (or to another party as designated by MCC) the amount of such Tax in Namibia Dollars within thirty (30) days (or such other period as may be agreed in writing by the Parties) after Namibia is notified in writing (whether by MCC or MCA-Namibia) that such Tax has been paid.

(e) No MCC Funding, proceeds thereof or Program assets may be applied by Namibia in satisfaction of its obligations under this Section 2.8.

Section 2.9 Lower Middle Income Countries. Section 606(b) of the MCA Act restricts the amount of assistance that MCC may provide to "lower middle income countries," a term that is defined in the MCA Act and includes Namibia. To the extent that MCC determines, in MCC's reasonable discretion, that the amount of Program Funding granted to Namibia in this Compact may result in a violation of Section 606(b) of the MCA Act, MCC, at any time and from time to time upon written notice to Namibia, may reduce the amount of Program Funding, or withhold any Disbursement of Program Funding, to avoid or remedy such a violation.

ARTICLE 3. IMPLEMENTATION

Section 3.1 Program Implementation Agreement. Namibia will implement the Program in accordance with this Compact and as further specified in an agreement entered into between the GRN and the USG relating to, among other matters, implementation arrangements, fiscal accountability and disbursement and use of MCC Funding (the "*Program Implementation Agreement*" or "*PIA*").

Section 3.2 Responsibilities.

(a) Namibia has principal responsibility for overseeing and managing the implementation of the Program.

(b) Namibia hereby designates the National Planning Commission ("*NPC*"), a governmental entity established under the laws of the Republic of Namibia pursuant to the National Planning Commission Act, 1994 (the "*NPC Act*"), as the accountable entity to implement the Program and to perform Namibia's rights and responsibilities to oversee, manage and implement the Program, including without limitation, managing the implementation of Projects and their activities, allocating resources and managing procurements. The NPC, acting in such designated capacity, will be referred to herein as "*MCA-Namibia*," and has the authority

to bind Namibia with regard to all Program activities. The designation of this Section 3.2(b) will not relieve Namibia of any obligations and rights, for which Namibia retains full responsibility.

(c) Namibia will ensure that no current law or regulation in Namibia makes unlawful or otherwise prevents or hinders the performance of any of Namibia's obligations under this Compact, the PIA or any other related agreement or any transaction contemplated hereby or thereby. Furthermore, Namibia will use its best efforts to ensure that no future law or regulation in Namibia will make unlawful or otherwise prevent or hinder the performance of any of Namibia's obligations under this Compact, the PIA or any other related agreement or any transaction contemplated hereby or thereby.

(d) Namibia will ensure that any assets or services funded in whole or in part (directly or indirectly) by MCC Funding will be used solely in furtherance of this Compact and the Program unless otherwise agreed by MCC in writing.

(e) Namibia will take all necessary or appropriate steps to achieve the Program Objective and Project Objectives during the Compact Term (as defined in Section 7.4).

Section 3.3 Policy Performance. In addition to undertaking the specific policy, legal and regulatory reform commitments identified in Annex I (if any), Namibia will seek to maintain and to improve its level of performance under the policy criteria identified in Section 607 of the MCA Act, and the selection criteria and methodology used by MCC.

Section 3.4 Assurances. Namibia assures MCC that:

(a) as of the date this Compact is signed by Namibia, the information provided to MCC by or on behalf of Namibia in the course of reaching agreement with MCC on this Compact is true, correct and complete in all material respects;

(b) this Compact, upon its ratification by Namibia, does not, and will not, conflict with any other obligation of Namibia, any other international agreement or obligation of Namibia or any of the laws of Namibia; and

(c) Namibia will not invoke any of the provisions of its internal law to justify or excuse a failure to perform its duties or responsibilities under this Compact.

Section 3.5 Implementation Letters. To assist Namibia in the implementation of this Compact, from time to time, MCC may issue implementation letters that will furnish additional guidance about implementation of this Compact, the PIA or other related agreements (each, an "**Implementation Letter**"). The Parties may also issue jointly agreed-upon Implementation Letters to confirm and record their mutual understanding on aspects related to the implementation of this Compact, the PIA or other related agreements. Such Implementation Letters will be applied when implementing the Program.

Section 3.6 Procurement. Namibia will ensure that the procurement of all goods, works and services by Namibia or any Provider (as defined in Section 3.7(c)) to implement the Program will be consistent with the MCA-Namibia Program Procurement Rules attached hereto as Annex VI (the "**MCA-Namibia Procurement Rules**") as provided for in the Program Implementation Agreement. The Procurement Rules will include, among others, the following requirements:

(a) open, fair, and competitive procedures must be used in a transparent manner to solicit, award and administer contracts and to procure goods, works and services;

(b) solicitations for goods, works, and services must be based upon a clear and accurate description of the goods, works and services to be acquired;

(c) contracts must be awarded only to qualified contractors that have the capability and willingness to perform the contracts in accordance with their terms on a cost effective and timely basis; and

(d) no more than a commercially reasonable price, as determined, for example, by a comparison of price quotations and market prices, will be paid to procure goods, works and services.

Section 3.7 Records; Accounting; Covered Providers; Access.

(a) Namibia Books and Records. Namibia will maintain, and will use its best efforts to ensure that all Covered Providers (as defined in Section 3.7(c)) maintain, accounting books, records, documents and other evidence relating to the Program adequate to show to MCC's satisfaction the use of all MCC Funding ("**Compact Records**"). In addition, Namibia will furnish or cause to be furnished to MCC, upon its request, all such Compact Records.

(b) Accounting. Namibia will maintain and will use its best efforts to ensure that all Covered Providers maintain Compact Records in accordance with generally accepted accounting principles prevailing in the United States, or at Namibia's option and with MCC's prior written approval, other accounting principles, such as those (i) prescribed by the International Accounting Standards Board, or (ii) then prevailing in Namibia. Compact Records must be maintained for at least five (5) years after the end of the Compact Term or for such longer period, if any, required to resolve any litigation, claims or audit findings or any statutory requirements.

(c) Providers and Covered Providers. Unless the Parties agree otherwise in writing, a "**Provider**" is (i) any entity of Namibia that receives or uses MCC Funding or any other Program asset in carrying out activities in furtherance of this Compact or (ii) any third party that receives at least US\$50,000 in the aggregate of MCC Funding (other than as salary or compensation as an employee of an entity of Namibia) during the Compact Term. A "**Covered Provider**" is (i) a non-United States Provider that receives (other than pursuant to a direct contract or agreement with MCC) US\$300,000 or more of MCC Funding in any Namibia fiscal year or any other non-United States person or entity that receives, directly or indirectly, US\$300,000 or more of MCC Funding from any Provider in such fiscal year, or (ii) any United States Provider that receives (other than pursuant to a direct contract or agreement with MCC) US\$500,000 or more of MCC Funding in any Namibia fiscal year or any other United States person or entity that receives, directly or indirectly, US\$500,000 or more of MCC Funding from any Provider in such fiscal year.

(d) Access. Upon MCC's request, Namibia, at all reasonable times, will permit, or cause to be permitted, authorized representatives of MCC, an authorized United States inspector general, the United States Government Accountability Office, any auditor responsible for an audit contemplated herein or otherwise conducted in furtherance of this Compact, and any agents or representatives engaged by MCC or Namibia to conduct any assessment, review or evaluation

of the Program, the opportunity to audit, review, evaluate or inspect facilities and activities funded in whole or in part by MCC Funding.

Section 3.8 Audits: Reviews.

(a) Audits. Except as the Parties may otherwise agree in writing, Namibia will, on at least a semi-annual basis, conduct, or cause to be conducted, financial audits of all Disbursements of MCC Funding covering the period from signing of this Compact until the earlier of the following December 31 or June 30 and covering each six-month period thereafter ending December 31 and June 30, through the end of the Compact Term, in accordance with the terms of the Program Implementation Agreement. In addition, upon MCC's request, Namibia will ensure that such audits are conducted by an independent auditor approved by MCC and named on the list of local auditors approved by the Inspector General of MCC (the "**Inspector General**") or a United States-based certified public accounting firm selected in accordance with the "Guidelines for Financial Audits Contracted by MCA" (the "**Audit Guidelines**") issued and revised from time to time by the Inspector General, which are posted on the MCC Website. Audits will be performed in accordance with the Audit Guidelines and be subject to quality assurance oversight by the Inspector General. Each audit must be completed and the audit report delivered to MCC no later than 90 days after the first period to be audited and no later than 90 days after each June 30 and December 31 thereafter, or such other period as the Parties may otherwise agree in writing.

(b) Audits of United States Entities. Namibia will ensure that agreements between Namibia or any Provider, on the one hand, and a United States nonprofit organization, on the other hand, that are financed with MCC Funding state that the United States nonprofit organization is subject to the applicable audit requirements contained in OMB Circular A-133 issued by the United States Government Office of Management and Budget ("**OMB**"). Namibia will ensure that agreements between Namibia or any Provider, on the one hand, and a United States for-profit Covered Provider, on the other hand, that are financed with MCC Funding state that the United States for-profit organization is subject to audit by the applicable United States Government agency, unless Namibia and MCC agree otherwise in writing.

(c) Corrective Actions. Namibia will use its best efforts to ensure that Covered Providers take, where necessary, appropriate and timely corrective actions in response to audits, consider whether a Covered Provider's audit necessitates adjustment of Namibia's records, and require each such Covered Provider to permit independent auditors to have access to its records and financial statements as necessary.

(d) Audit by MCC. MCC will have the right to arrange for audits of Namibia's use of MCC Funding.

(e) Cost of Audits, Reviews or Evaluations. MCC Funding may be used to fund the costs of any audits, reviews or evaluations required under this Compact.

ARTICLE 4.
COMMUNICATIONS

Section 4.1 Communications. Any document or communication required or submitted by either Party to the other under this Compact must be in writing and, except as otherwise agreed with MCC, in English. For this purpose, the address of each Party is set forth below.

To MCC:

Millennium Challenge Corporation

Attention: (a) before this Compact enters into force, Vice President, Compact Development; and (b) after this Compact enters into force, Vice President, Compact Implementation
(in each case, with a copy to the Vice President and General Counsel)

875 Fifteenth Street, N.W.

Washington, DC 20005

United States of America

Facsimile: (202) 521-3700

Telephone: (202) 521-3600

Email: VPDevelopment@mcc.gov (Vice President, Compact Development)
VPImplementation@mcc.gov (Vice President, Compact Implementation)
VPGeneralCounsel@mcc.gov (Vice President and General Counsel)

To Namibia:

The Director General

National Planning Commission

Office of the President

Government Office Park

Luther Street

Block D, Room 206

Private Bag 12005

Windhoek

Republic of Namibia

Tel: +264 61 283 4222

Fax: +264 61 250 751

with a copy to:

MCA-Namibia
Attention: Chief Executive Officer
c/o National Planning Commission
Office of the President
Government Office Park
Luther Street
Block D, Room 206
Private Bag 12005
Windhoek
Republic of Namibia
Tel: +264 61 283 4222
Fax: +264 61 250 751

Section 4.2 Representatives. For all purposes of this Compact (including, without limitation, signing agreements supplemental to this Compact), Namibia will be represented by the individual holding the position of, or acting as, the Director General of NPC, and MCC will be represented by (a) before this Compact enters into force, the individual holding the position of, or acting as, Vice President, Compact Development, and (b) after this Compact enters into force, the individual holding the position of, or acting as, Vice President, Compact Implementation (each of the foregoing, a "***Principal Representative***"). Each Party, by written notice to the other Party, may designate one or more additional representatives (each, an "***Additional Representative***") for all purposes other than signing amendments to this Compact. Namibia hereby designates the chief executive officer of MCA-Namibia as an Additional Officer. A Party may change its Principal Representative to a new representative that holds a position of equal or higher rank upon written notice to the other Party.

Section 4.3 Signatures. With respect to all documents other than this Compact or an amendment to this Compact, a signature delivered by facsimile or electronic mail will be binding on the Party delivering such signature to the same extent as an original signature would be.

ARTICLE 5.

TERMINATION; SUSPENSION; REFUNDS

Section 5.1 Termination; Suspension.

(a) Either Party may terminate this Compact without cause in its entirety by giving the other Party thirty (30) days' written notice.

(b) MCC may, immediately, upon written notice to Namibia, suspend or terminate this Compact or MCC Funding, in whole or in part, and any obligation related thereto, if MCC determines that any circumstance identified by MCC, in its reasonable discretion, as a basis for suspension or termination has occurred, which circumstances include but are not limited to the following:

(i) Namibia fails to comply with its obligations under this Compact, the PIA or any other agreement or arrangement entered into by Namibia in connection with this Compact or the Program;

(ii) an event or series of events has occurred that MCC determines makes it probable that the Program Objective or any of the Project Objectives will not be achieved during the Compact Term or that Namibia will not be able to perform its obligations under this Compact;

(iii) a use of MCC Funding or continued implementation of the Program violates or would violate applicable law or United States Government policy, whether now or hereafter in effect;

(iv) Namibia or any other person or entity receiving MCC Funding or using assets acquired in whole or in part with MCC Funding is engaged in activities that are contrary to the national security interests of the United States;

(v) an act has been committed or an omission or an event has occurred that would render Namibia ineligible to receive United States economic assistance under Part I of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2151 *et seq.*), by reason of the application of any provision of the Foreign Assistance Act of 1961 or any other provision of law;

(vi) Namibia has engaged in a pattern of actions inconsistent with the criteria used to determine the eligibility of Namibia for assistance under the MCA Act ; and

(vii) Namibia or another person or entity receiving MCC Funding or using assets acquired in whole or in part with MCC Funding is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking.

(c) All Disbursements will cease upon expiration, suspension, or termination of this Compact; *provided, however*, MCC Funding may be used, in compliance with this Compact and the PIA, to pay for (i) reasonable expenditures for goods, works or services that are properly incurred under or in furtherance of the Program before expiration, suspension or termination of this Compact, and (ii) reasonable expenditures (including administrative expenses) properly incurred in connection with the winding up of the Program within 120 days after the expiration, suspension or termination of this Compact, so long as the request for such expenditures is submitted within ninety (90) days after such expiration, suspension or termination.

(d) Subject to Section 5.1(c), upon the expiration, suspension or termination of this Compact, (i) any amounts of MCC Funding not disbursed by MCC to Namibia will be automatically released from any obligation in connection with this Compact, and (ii) any amounts of MCC Funding disbursed by MCC but not expended before the expiration, suspension or termination of this Compact, plus accrued interest thereon will be returned to MCC within thirty (30) days after Namibia receives MCC's request for such return; *provided, however*, that if this Compact is suspended or terminated in part, MCC may request a refund for only the amount of MCC Funding allocated to the suspended or terminated portion.

(e) MCC may reinstate any suspended or terminated MCC Funding under this Compact if MCC determines that Namibia or other relevant person or entity has committed to correct each condition for which MCC Funding was suspended or terminated.

Section 5.2 Refunds; Violation.

(a) If any MCC Funding, any interest or earnings thereon, or any asset acquired in whole or in part with MCC Funding is used for any purpose in violation of the terms of this Compact, then MCC may require Namibia to repay to MCC in United States Dollars the value of the misused MCC Funding, interest, earnings, or asset, plus interest within thirty (30) days after Namibia's receipt of MCC's request for repayment. Namibia will not use MCC Funding, proceeds thereof or Program assets to make such payment.

(b) Notwithstanding any other provision in this Compact or any other agreement to the contrary, MCC's right under this Section 5.2 for a refund will continue during the Compact Term and for a period of (i) five years thereafter or (ii) one year after MCC receives actual knowledge of such violation, whichever is later.

Section 5.3 Survival. Namibia's responsibilities under Sections 2.4, 2.6, 2.7, 3.7, 3.8, 5.1(c), 5.1(d), 5.2, 5.3, 5.4 and 6.2 of this Compact will survive the expiration, suspension or termination of this Compact.

Section 5.4 Post-Termination Discussions. Following the termination of this Compact pursuant to Section 5.1(b), at Namibia's request, the Parties will meet at a mutually convenient time and location for the purpose of notifying Namibia of the circumstances or reasons for such termination to the extent it has not previously received such notice. Notwithstanding the Parties agreement to meet, which will be honored in good faith, any matters discussed will be non-binding (unless otherwise agreed and recorded by the Parties), will not give rise to a claim by either Party, and MCC will not be obligated to reinstate the Compact following any such meeting.

ARTICLE 6.

COMPACT ANNEXES; AMENDMENTS; GOVERNING LAW

Section 6.1 Annexes. Each annex to this Compact constitutes an integral part hereof, and references to "Annex" mean an annex to this Compact unless otherwise expressly stated.

Section 6.2 Amendments.

(a) The Parties may amend this Compact only by a written agreement signed by the Principal Representatives.

(b) Without formally amending this Compact, the Parties may agree in writing, signed by the Principal Representatives, to modify any Annex to this Compact to (i) suspend, terminate or modify any project described in Annex I (each, a "**Project**" and collectively, the "**Projects**") or to create a new project, (ii) change the designations and allocations of funds among the Projects, the Project activities, or any activity under Program administration or monitoring and evaluation, or between a Project identified as of the entry into force of this Compact and a new project, or (iii) add, delete or waive any condition precedent described in Annex IV, or (iv) amend the MCA-Namibia Procurement Rules, *provided that* any such modification (1) is consistent in all material respects with the Program Objective, (2) does not cause the amount of Program Funding to exceed the aggregate amount specified in Section 2.1 of

this Compact (as may be modified by operation of Section 2.2(e) of this Compact), (3) does not cause the amount of Compact Implementation Funding to exceed the aggregate amount specified in Section 2.2(a) of this Compact, (4) does not cause Namibia's responsibilities or contribution of resources to be less than specified in this Compact, (5) does not extend the Compact Term and (6) in the case of a modification to change the designations or allocations of funds among Projects, does not materially adversely affect any activity under Program administration or monitoring and evaluation.

(c) Any modification of any annex to this Compact or to any other provision of this Compact pursuant to this Section 6.2 shall be binding on Namibia without the need for further ratification by Namibia, any further parliamentary action, or satisfaction of any additional domestic requirements of Namibia.

Section 6.3 Inconsistencies. In the event of any conflict or inconsistency between:

(a) any annex to this Compact and any of Articles 1 through 7, such Articles 1 through 7 will prevail; or

(b) this Compact and any other agreement between the Parties regarding the Program, this Compact will prevail.

Section 6.4 Governing Law. This Compact is an international agreement and as such is governed by the principles of international law.

Section 6.5 Additional Instruments. Any reference to activities, obligations or rights undertaken or existing under or in furtherance of this Compact or similar language will include activities, obligations and rights undertaken by, existing under or in furtherance of any agreement, document or instrument related to this Compact and the Program.

Section 6.6 References to MCC Website. Any reference in this Compact, the PIA or any other agreement entered into in connection with this Compact, to a document or information available on, or notified by posting on the MCC Website will be deemed a reference to such document or information as updated or substituted on the MCC Website from time to time.

Section 6.7 References to Laws, Regulations, Policies and Guidelines. Each reference in this Compact, the PIA or any other agreement entered into in connection with this Compact, to a law, regulation, policy, guideline or similar document will be construed as a reference to such law, regulation, policy, guideline or similar document as it may, from time to time, be amended, revised, replaced, or extended and will include any law, regulation, policy, guideline or similar document issued under or otherwise applicable or related to such law, regulation, policy, guideline or similar document.

Section 6.8 MCC Status. MCC is a United States Government corporation acting on behalf of the United States Government in the implementation of this Compact. MCC and the United States Government have no liability under this Compact, the Program Implementation Agreement or any supplemental agreement, are immune from any action or proceeding arising under or relating to any of the foregoing documents, and Namibia hereby waives and releases all claims related to any such liability. In matters arising under or relating to this Compact, the Program Implementation Agreement or any supplemental agreement neither MCC nor the

United States Government will be subject to the jurisdiction of the courts or any other body of Namibia.

ARTICLE 7. ENTRY INTO FORCE

Section 7.1 Domestic Requirements. Before this Compact enters into force, Namibia will take all necessary steps to ensure that immediately upon this Compact entering into force (a) this Compact and the PIA and all of the provisions of this Compact and the PIA are valid and binding and are in full force and effect in Namibia, (b) this Compact, the PIA and any other agreement entered into in connection with this Compact to which Namibia and MCC are parties (if so stipulated therein) are international agreements, and (c) no laws of Namibia (other than the constitution of Namibia), whether now or hereafter in effect, will take precedence or prevail over the terms of this Compact or the PIA.

Section 7.2 Conditions Precedent to Entry into Force. This Compact will not enter into force unless and until each of the following conditions have been satisfied:

- (a) the PIA must have been executed by the parties thereto and have become effective;
- (b) Namibia must have delivered to MCC:
 - (i) a certificate signed and dated by the Principal Representative of Namibia, or such other duly authorized representative of Namibia acceptable to MCC, certifying that Namibia has satisfied the requirements of Section 7.1;
 - (ii) a legal opinion from the Attorney General of Namibia (or other entity acceptable to MCC), in form and substance satisfactory to MCC; and
 - (iii) a certified copy of the Instrument of Ratification evidencing the ratification of this Compact by Namibia, which MCC may post on its website or otherwise make publicly available; and
- (c) MCC must determine that after signature of this Compact, Namibia has not engaged in any action or omission that is inconsistent with the eligibility criteria for MCC Funding.

Section 7.3 Date of Entry into Force. This Compact will enter into force on the later of (a) the date of the last letter in an exchange of letters between the Principal Representatives confirming that each Party has completed its domestic requirements for entry into force of this Compact and (b) the date that all conditions set forth in Section 7.2 have been satisfied.

Section 7.4 Compact Term. This Compact will remain in force for five years after its entry into force, unless terminated earlier under Section 5.1 (the "*Compact Term*").

Section 7.5 Provisional Application. Upon signature of this Compact and ratification by Namibia of this Compact and until it has entered into force in accordance with Section 7.3, the Parties will provisionally apply the terms of this Compact, *provided that* no MCC Funding, other

than Compact Implementation Funding, will be made available or disbursed before this Compact enters into force.

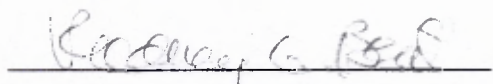
SIGNATURE PAGE FOLLOWS ON THE NEXT PAGE

IN WITNESS WHEREOF, the undersigned, duly authorized, have signed this Compact this 28th day of July, 2008.

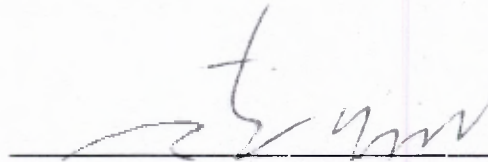
Done at Windhoek, Namibia

FOR MILLENNIUM CHALLENGE
CORPORATION, ON BEHALF OF THE
UNITED STATES OF AMERICA

FOR THE REPUBLIC OF NAMIBIA



Name: Rodney G. Bent
Title: Deputy Chief Executive Officer



Name: Professor Peter H. Katjavivi
Title: Director-General, National Planning
Commission

ANNEX I

PROGRAM DESCRIPTION

A. PROGRAM OVERVIEW

This Annex I describes the Program that MCC Funding will support in Namibia during the Compact Term.

1. Background and Consultative Process.

(a) Background.

Namibia, a large and sparsely populated country on Africa's southwest coast, has a population of approximately 2.1 million. It gained independence in 1990 after a century of foreign domination, including a period of half a century of apartheid. While the country has experienced steady economic growth since achieving independence¹, as a consequence of its history, approximately 27 percent² of its population lives in poverty (particularly in the northern communal areas or "NCAs"), and in 2006 its per capita income was just US\$3,000.³ Additionally, the distribution of wealth and income within the country is highly unequal⁴. Unemployment is high (approximately 30 percent in 2006) and the HIV prevalence rate is more than 19 percent⁵. Despite facing such seemingly daunting obstacles to improving its social and economic conditions, Namibia is committed to providing equal opportunity to previously disadvantaged populations, while maintaining political and economic stability.

The Compact Goal is to reduce poverty through economic growth in Namibia. One of the ways to achieve such poverty reduction in Namibia is to create a skilled and educated labor force. Another way is to expand and diversify the economy's export base, which is currently narrowly focused on mineral commodities, by supporting sectors such as livestock, indigenous natural products and tourism. The Program will focus on improving the quality of education and training for underserved populations, and attempt to capitalize on Namibia's comparative advantages, namely large areas of semi-arid communal land suitable for livestock grazing, natural products indigenous to Namibia, and diverse wildlife and unique landscapes ideal for ecotourism. This approach is expected to have the greatest impact on alleviating poverty.

¹ According to the World Bank's "International Bank for Reconstruction and Development Interim Strategy Note: An Engagement Framework for the Republic of Namibia for FY 08-09," April 25, 2007, Namibia has experienced an average of 4.3 percent economic growth per annum.

² Ibid.

³ Ibid.

⁴ According to International Monetary Fund report ("Namibia: 2007 Article IV Consultation – Staff Report; Public Information Notice on the Executive Board Discussion; and Statement by the Executive Director for Namibia," February 2008), Namibia has the second highest Gini coefficient in the world at 0.64.

⁵ http://www.unicef.org/infobycountry/namibia_statistics.html

(b) Consultative Process.

In connection with its proposal for this Compact, Namibia undertook an extensive consultative process. Namibia held consultations in all 13 regions of the country and began national level consultations in mid-2006, which have been on-going particularly in those sectors that the Program will support. Participating stakeholders included government officials at central and regional levels, local authority councilors and stakeholders, regional coordination committees, regional AIDS committees, regional emergency units, communal land boards (“CLBs”), farmers’ associations, conservancy groups, women’s associations, church groups, youth groups, vulnerable members of society, non-governmental organizations (NGOs), community based organizations, and the private sector.

Worthy of note is the fact that the consultative process did not reveal a major divergence between the issues identified at national and regional levels. This appears to confirm that, in general, there is consensus within Namibia on priorities for economic growth. This consensus was built on previous consultative processes for Vision 2030,⁶ the 5-year National Development Plans, Participatory Poverty Assessments and other sector-level consultations. MCA-Namibia, in close consultation and cooperation with the stakeholders for each of the Program’s components, will continue to consult and inform Namibians country-wide on this Compact to ensure broad-based understanding, appreciation, commitment, and ownership of the proposed investments.

2. Description of Program and Beneficiaries.⁷

The Program, whose objective is to increase the knowledge, skills and competence of the Namibian workforce, and to increase the productivity of agricultural and non-agricultural enterprises in communal areas, consists of three Projects: the Education Project, the Tourism Project and the Agriculture Project. Each Project (the details of which are set forth below) is designed to help address Namibia’s constraints to economic growth and lead to sustainable poverty reduction. Specifically, the Education Project aims to increase skilled labor by helping to create a more efficient and effective educational system that will benefit approximately 1,000,000 young people, and ultimately increase employment opportunities. The Tourism Project will stimulate investment and income generation in poor, rural communities through increasing the income for an estimated 23,000 tourism-related employees and benefitting over 100,000 individuals living in conservancies. Lastly, the Agriculture Project will improve productivity in the livestock and INP sectors, and contribute to enhanced household incomes for over 400,000 Namibians.

Specific anticipated results of the Program over a twenty year period include:

- (a) a higher quality of education for approximately one million primary and secondary school learners across Namibia from an improved delivery system for textbooks;

⁶ Launched by H.E. President Sam Nujoma, in June 2004, Vision 2030 is the Government’s long-term national strategy for development ending in the year 2030.

⁷ Figures in this section refer to MCC’s economic and beneficiary analysis for a period of 20 years and refer to direct and indirect beneficiaries.

- (b) access to financing for tertiary education for at least 60 percent of all qualifying applicants demonstrating financial need;
- (c) training of up to 49,000 low-income individuals who are either unemployed and/or unskilled at the Community Skills and Development Centers ("**COSDECs**");
- (d) training in the tourism sector for more than 2,600 additional trainees and training in other high-priority vocational areas (to be further indentified) for additional students under an improved capacity for market-relevant training in the competitive grants program;
- (e) a higher quality of education for approximately 41,700 students, primarily in rural communities, and which is expected to result in higher lifetime income for these students due to the proposed investments in the targeted primary and secondary schools;
- (f) an increase in tourism by an estimated 4,000 additional overseas tourists per year as a result of marketing activities, resulting in an incremental present added value by these tourists of approximately US\$7 million;
- (g) increased employment income for over 7,000 individuals due to enhanced investment in conservancies;
- (h) increased tourism visits and value added to the Namibian economy resulting from investments in Etosha National Park;
- (i) either increased employment, wages or household income for an estimated 23,000 people as a result of the Tourism Project;
- (j) improved market efficiency, improved land tenure security, and more equitable access to land benefitting over 130,000 individuals;
- (k) increased income to approximately 1,800 farmers across 50 communities due to the rangeland management component; and
- (l) increased incomes for over 15,000 households as a result of the Indigenous Natural Products ("**INP**") component of the Agriculture Project.

3. Environmental and Social Accountability.

All of the Projects will be implemented in compliance with the MCC Environmental Guidelines, MCC's guidance on the integration of gender in Program implementation delivered by MCC to Namibia or posted on the MCC Website (the "**MCC Gender Policy**") and the World Bank's Operational Policy on Involuntary Resettlement in effect as of July 2007 ("**OP 4.12**"). Namibia will also ensure that the Projects comply with all national environmental laws and regulations, licenses and permits, except to the extent such compliance would be inconsistent with this Compact. Namibia will: (a) undertake and complete any strategic environmental (and social) assessments ("**SEA**"), environmental impact assessments ("**EIA**"), environmental assessments ("**EA**"), environmental management plans ("**EMP**") and resettlement action plans ("**RAP**"), in form and substance satisfactory to MCC, and as required under the laws of Namibia, the MCC Environmental Guidelines, this Compact, the Program Implementation Agreement or other supplement agreement or as otherwise required by MCC; (b) implement to MCC's satisfaction

environmental and social mitigation measures identified in such assessments or plans; and (c) commit to fund environmental mitigation, (including costs of resettlement) in excess of MCC Funding not specifically provided for in the budget for any Project.

DESCRIPTION OF PROJECTS

Set forth below is a description of each of the Projects that Namibia will implement, or cause to be implemented, using MCC Funding to advance the applicable Project Objective. In addition, specific activities that will be undertaken within each Project (each, an “*Activity*”), including sub-activities, are also described.

B. EDUCATION PROJECT

1. Summary of Project and Activities.

MCC Funding will be used to improve the effectiveness, efficiency and quality of Namibia’s education sector through systemic reforms and critical near-term interventions that are consistent with the objectives of Namibia’s ETSIP Program (the “*Education Project*”). ETSIP is Namibia’s 15-year sector-wide Education and Training Sector Improvement Program, whose mission is to create a knowledge-based economy through increasing the effectiveness, efficiency and quality of Namibia’s education and training system. Specifically, MCC Funding will support key gaps within ETSIP, as well as fund complementary measures, such as institutional strengthening, policy reform and targeted technical assistance to ensure sustainable results.

The Activities that will be undertaken in furtherance of the Education Project are:

(a) Improving the Quality of Education (the “*Education Quality Activity*”): This Activity involves the rehabilitation and renovation of infrastructure (including teacher housing) and equipment in approximately 47 primary and secondary schools, and the funding of training programs for school administrators and teachers. Additionally, this Activity includes funding for policy-relevant studies and improvements in science and computer training facilities at teacher training colleges. To reinforce Activity outcomes, Namibia will implement teacher education reform guidelines.

(b) Improving Vocational and Skills Training (the “*Vocational and Skills Training Activity*”): With MCC Funding, the Vocational and Skills Training Activity will assist with the establishment of a National Training Fund (“*NTF*”) within the Namibia Training Authority (“*NTA*”). MCC Funding will be used for the provision of technical assistance for the NTF and the creation of a training levy system that will sustain the NTF in the future. MCC Funding will also support priority vocational and skills training areas (including but not limited to tourism) selected under criteria developed by the NTA, which criteria will be employed through a competitive grants program to be implemented under this Activity. Namibia and MCA-Namibia commit to achieving satisfactory progress during the implementation of MCC supported training toward the effective operation of the NTF, which will include: possessing a proper governance structure (including the appointment of the NTA Board and the standing councils and committees), the adoption of selection criteria for the award of grants, the creation and implementation of the final sustainable levy structure, and the deployment of NTF funding so that public entities will not be privileged to the detriment of funding for private entities engaged in training. Finally, the NTF will operate on a sustainable basis and provide funding on a needs basis. MCC Funding will also be utilized (a) for the construction or renovation of approximately

nine COSDECs, and (b) to support efforts so that the private-training industry responds to the training demands of Namibia's market economy.

(c) Improving Access to and Management of Textbooks (the "**Textbook Activity**"): This Activity will focus on expanding access to and improving the distribution and management of textbooks within primary and secondary schools through operational support and reforms in the textbook acquisition process designed to make the process more transparent and competitive. This Activity will include funding for the acquisition of science, math and English textbooks for grades 5 – 12 on a national level and improving classroom use of textbooks. These acquisitions will be conducted in two phases. The first phase will fill actual gaps as determined by a textbook baseline study. The second phase will support a pilot procurement program aimed at improving textbook acquisition once MCC is satisfied that the supporting documentation (implementation plan for the 2008 Textbook Policy) is complied with such that there is a greater transparency and accountability in the acquisition, distribution and storage of textbooks. A system for monitoring textbook supply and demand will also be implemented.

(d) Investing in Regional Study and Resource Centers (the "**RSRC Activity**"): This Activity will fund the construction of approximately three regional study and resource centers ("**RSRCs**") in underserved areas that will improve community access to documentation, information resources, training materials and programs, as well as study facilities. Additionally, technical assistance and training will be provided for RSRC staff. Namibia will ensure that the MCC constructed RSRCs will offer expanded hours of operation with both day and evening hours as provided for by the 1997 "Information for Self-Reliance and Development: A Policy Framework for Libraries and Allied Information Agencies for Namibia." These extra hours will meet the needs of both students and individuals that work during the day.

(e) Expanding and Improving Access to, Equity, and Sustainability of Tertiary Education Finance (the "**Tertiary Education Finance Activity**"): This Activity's focus is expanding access to tertiary finance. This will be achieved by providing technical assistance to the Ministry of Education ("**MoE**") to support its efforts to establish a sustainable and widely accessible tertiary and technical education finance system, including, *inter alia*, improved loan and recovery rates and targeting of financing subsidies to those in need.

(f) Cross-Project Support: To further support the Activities of this Project, MCC Funding will also be used to strengthen the HIV/AIDS program within the MoE HIV/AIDS Management Unit, including development of HIV/AIDS awareness and prevention plans related to construction activities.

2. Beneficiaries⁸.

Beneficiaries of the Education Quality Activity are primarily students of the target schools, where 47 percent of beneficiary students are estimated to live in households with consumption of less than US\$2 per day per person. The target schools currently enroll approximately 18,400 students. Over the course of 20 years, the schools will educate an estimated 41,700 primary and

⁸ Figures in this section are based on MCC's economic and beneficiary analysis and are over a 20-year period.

secondary students. In addition, roughly a third of the teachers at the 47 schools receiving teacher housing will realize a marked improvement in living conditions. Overall, males and females will be exposed to the new schools in equal proportion. Namibia has generally achieved gender parity within its school system, although there are some differences between regions and some school phases.

Based on MCA-N forecasts, the RSRCs would serve at least 8,000 individuals a year (about 10 percent of population of the towns where the centers are located). There are over 120,000 learners within regional reach of the centers who could benefit from the mobile services provided from the centers and from visits to the centers. These centers will be located in the principal towns of relatively poor and under-served regions.

Beneficiaries of the COSDECs tend to be unskilled and/or unemployed individuals, and program benefits are projected to benefit up to 2,800 COSDEC trainees per year (or 49,000 over 20 years).

The Textbook Activity will benefit the poorer segments of the student population. The current need for textbooks is relatively higher at schools in poor communities, since wealthier communities tend to have better-financed and resourced schools.

The Tertiary Education Finance Activity will help Namibia to achieve a reduction in defaults and an increase in the number of qualified but disadvantaged individuals accessing loans and obtaining tertiary education. The assistance will enable better targeting of public funds to the most disadvantaged students, rather than those with the ability to pay. Better cost recovery will also allow reduced direct public spending on tertiary education loans.

3. Sustainability.

In acknowledgement of the financial commitment required to address essential maintenance needs of general schools, the MoE has embarked on a major program of periodic maintenance and renovations for these schools. A 2005 MoE policy directive has stipulated that 25 percent of its development budget is set aside each year for maintenance (instead of spending that portion on new construction), which is significantly above the Ministry of Works recommended allocation of 5 percent. Further, through ETSIP funds, MoE has committed to allocating a set percentage towards school hostel maintenance.

At the local level, the MoE has also initiated a pilot program of funding individual "School Development Funds" on a revolving basis, which currently reaches an estimated 150 schools (or nearly 10 percent of the school network). This program involves delegation of authority to schools to undertake minor repairs, as a means of removing responsibility for such activities from the Regional Education and Ministry of Works' offices. To support effective use of the School Development Funds, the MoE has begun to require that each school prepare and submit three-year rolling maintenance plans.

Additionally, in light of the increasing expenditures for utilities at the school-level, the MoE has begun to further involve school principals in the flow of information regarding costs and billing, and has also introduced pilot programs in which schools are assuming greater responsibility for certain recurring expenses.

In establishing ETSIP, Namibia has demonstrated a commitment to undertaking substantial policy and institutional changes to catalyze key improvements in the quality of Namibian education. Specifically, Namibia has supported the efforts of the MoE to develop and implement new policies, procedures, and guidelines affecting the delivery of pre-primary to secondary education. Prominent institutional changes that are being enacted by MoE are presented below. In addition, to provide further support to the MoE in their long-term reform efforts, the MCC will fund targeted training and technical assistance with key institutional changes and policy implementation processes.

4. Environmental and Social Mitigation Measures.

The Education Project is categorized under MCC's Environmental Guidelines as a Category B Project due to the environmental and social impacts that will result from certain activities⁹. EAs and EMPs will be developed to assess the environmental and social impacts of the construction activities within the Education Quality, Vocational and Skills Training, and RSRCs Activities. Any resettlement impacts resulting from the Education Project will be identified and documented in compliance with OP 4.12.

The Education Quality Activity will include the implementation of a general hygiene program at schools, which will be implemented by MoE. Furthermore, under the Education Quality Activity, disability access will be provided at the 47 general schools, which will reinforce the existing MoE requirement for disability access in all new school buildings. The Education Quality Activity will also benefit vulnerable groups in Namibia, such as the San people.

The MoE HIV/AIDS Management Unit ("*HAMU*") will receive targeted management strengthening support, which will include activities intended to mainstream HIV/AIDS education and training across all MoE directorates, associated institutions, and planning activities. The technical advisor working with HAMU will also develop and implement HIV/AIDS awareness and prevention plans for school populations and communities where each educational facility is located for the Education Quality, Vocational and Skills Training, and RSRCs Activities.

5. Donor Coordination.

The first phase for the implementation of ETSIP (2006-2013) has been programmed in detail. Through ETSIP, Namibia coordinates donors to participate in a sector-wide program mainly through budget support and extra-budgetary support, and the Activities of the Education Project are drawn from this program. Namibia's pledged contribution to this plan includes US\$162 million over 2006-2020, or approximately US\$13 million annually.

The Education Project will focus on certain aspects within ETSIP in order to complement the implementation of the overall sector program, and MCC has coordinated closely with the lead development partners in this effort, namely the World Bank and EU. With respect to other ETSIP development partners (who fund major projects rather than provide general budget support), MCC has discussed project activities with USAID, PEPFAR, Finland, Sweden,

⁹ No environmental or social assessment or management planning is required under MCC's Environmental Guidelines for the Textbook Activity or the Tertiary Education Finance Activity.

Norway, KfW of Germany, and Luxembourg. For the NTF, MCC is cooperating specifically with the Luxembourg Development Agency.

6. USAID.

As a member of ETSIP, MCC and MCA-Namibia have had ongoing discussions with USAID in the development of this Compact.

7. Policy, Legal and Regulatory Reforms.

As noted above, Namibia's establishment of a fifteen-year national reform program for the education sector demonstrates a commitment to undertake substantial policy and institutional changes to catalyze key improvements in the quality of Namibian education and skills development. Specifically, Namibia has supported the efforts of the MoE to develop and implement new policies, procedures, and guidelines affecting the delivery of primary to secondary education. In addition, to provide further support to the MoE in their long-term reform efforts, MCC Funding will support targeted training and technical assistance with key institutional changes and policy implementation processes.

With respect to sector-specific policy reform commitments, Namibia has made several notable advancements in education, encompassing:

- Enactment of the National Training Fund within the NTA under the Vocational Education and Training ("**VET**") Act of 2008;
- Establishing and staffing the NTA as provided for in the VET Act;
- Approval of a new National Textbook Policy and implementation plan for primary and secondary schools (2008); and
- Adoption of policies concerning the Colleges of Education to allow for their semi-autonomy and introduction of performance-based contracts.

In addition, Namibia will implement reforms at the teacher training colleges aimed at: (a) improving and adapting curriculum; (b) setting fees and charges; (c) establishing policies and procedures to raise outside funds; (d) setting admissions standards; (e) improving screening of teacher applicants; and (f) improving management and maintenance of facilities.

C. TOURISM PROJECT

1. Summary of Project and Activities.

Consistent with Namibia's national development strategies and in support of reform efforts already underway, MCC Funding will support three priority Activities in the tourism sector (the "**Tourism Project**"): (a) improve the management and infrastructure of Etosha National Park ("**ENP**"); (b) enhance the marketing of Namibian tourism; and, (c) develop the capacity of communal conservancies to attract investments in ecotourism and capture a greater share of the revenue generated by tourism in Namibia. Together, these Activities will generate income and create employment opportunities for some of the poorest populations in Namibia, while conserving the natural resources that serve as the foundation for the tourism industry.

The Activities that will be undertaken in furtherance of the Tourism Project are:

(a) Improved Management and Infrastructure of Etosha National Park (the “**ENP Activity**”): This Activity aims to improve the management capacity of ENP, promote private sector investment in and around Namibia’s national parks, increase tourism revenue nationally, and benefit rural communal conservancies. Achieving these goals requires improving budget control and management of the park and increasing private sector investment in joint-venture lodges around ENP and joint-venture lodges and services within and near other national parks, among other things (collectively, the “**Performance Targets**”). MCC Funding will support technical assistance in support of improved management and a study of tourism carrying capacity and potential tourism investments in and around ENP and other national parks in the north, as well as investments in infrastructure for management centers and staff housing, road building and maintenance and the purchase of game translocation equipment.

(b) Marketing Namibian Tourism (the “**Marketing Activity**”): The Marketing Activity’s aim is to increase tourist arrivals to Namibia by expanding marketing to North American tourists, developing and marketing local and regional tourism route packages, and developing a fully interactive website. The development and marketing of local and regional tourism route packages will focus on conservancy sites with the explicit aim of directing anticipated increases in tourism visitors to communal areas. MCC Funding will provide financing to support these goals.

(c) Ecotourism Development in Conservancies (the “**Conservancy Support Activity**”): MCC Funding under this Activity will assist Namibia in building conservancy capacity to protect its natural resources, attract investment, and achieve financial sustainability so that households in communal conservancy areas (or conservancies) can receive a greater share of revenues. Based on individual conservancy needs and demands, the Activity will provide a range of technical assistance services and grant funding to approximately 31 high-tourism potential conservancies. Such assistance and funding will help to mitigate existing barriers to tourism enterprise investment and help render the conservancies financially self-sustainable. In addition, grant funding to promote joint-venture tourism enterprises between conservancies and the private sector will be provided to a subset of approximately 15 of the 31 conservancies.

2. Beneficiaries.

The main benefits of the Tourism Project accrue through increased tourism visits and value added to the Namibian economy. It is estimated that the Marketing Activity will result in an additional 4,000 tourists per year on average, which translates into an incremental (present) value added by overseas tourists of approximately US\$7 million (MCC calculations based on data provided by National Tourism Board and 2004 parks valuation study by Turpie *et al.* 2004).

The distribution of benefits will track the general distribution of income in Namibia, meaning approximately 23 percent of benefits will accrue to the poor (source: MET July 2006). Primary benefit streams of this Project include increased employment income, conservancy income (to be reinvested or distributed to members), profits to joint venture partners, and increased wildlife populations. There are 118,000 residents within the approximate 31 conservancies targeted for support. A projected 7,000 individuals are to enjoy significantly higher income as a result of full and part time employment generated through this Project (MCC projection based upon 2007

conservancy data). The other 111,000 conservancy residents are expected to receive benefits through small dividends or community-sponsored projects.

3. Sustainability.

In 2007 Etosha National Park earned revenues of approximately US\$3 million, mostly generated through daily usage fees collected at entry gates. This revenue goes directly to the Ministry of Finance ("**MoF**") which then allocates approximately US\$2.25 million back to the park to cover operating costs. MoF retains about US\$100,000 with the remaining US\$650,000 going into a collective Game Products Trust Fund available to the national parks network. ENP is currently allocating a disproportionately high percentage of its total operating budget to staff and transport costs. The Tourism Project will assist ENP in achieving a more balanced budget through growth in park visitors, an increase in park usage fees, and concessions awarded to the private sector. In addition, delegating more authority to ENP to manage its own budget should increase revenue and productivity. Further, use of MCC Funding for the ENP Activity will be contingent upon meeting the applicable performance targets which include the development of an integrated master plan for maintenance of all infrastructure and equipment within ENP and demonstration of sufficient budget to implement the plan.

The NTB receives an annual budget allocation of approximately US\$3.5 million and an additional US\$1.5 million in revenue collected through a 2 percent bed night levy charged for all overnight stays in hotels or lodges. The Tourism Project, which is expected to increase tourist arrivals through enhanced tourism marketing, will likely result in an increase of revenue to NTB as bed night levies increase.

Financial sustainability of conservancies is a primary objective of this Project as it will aim to develop the capacity of conservancies to attract private sector investment and receive a greater share of the tourism generated revenues. In 2007, benefits amounted to more than US\$1.68 million in gross revenues and US\$1.26 million in wage income, 66 percent of which were directly derived from tourism enterprises and represent a substantial increase in the period since 1994.

4. Environmental and Social Mitigation Measures.

The Tourism Project is categorized under MCC's Environmental Guidelines as a Category A project due to potential site-specific environmental and social impacts in sensitive areas anticipated from the construction of management centers in fragile ecosystems and in an area that is the traditional homeland to vulnerable ethnic groups. Tourism activities supported by the independent fund established under the Conservancy Support Activity will be classified as a Category D Activity under MCC's Environmental Guidelines.

To ensure the environmental sustainability of the Tourism Project and mitigate any environmental and social impacts, an (EIA) and site-specific EMP will be developed for the construction and rehabilitation of management centers in ENP. EMPs will include actions to limit or mitigate impacts of construction on fragile ecosystems within ENP, ensure proper waste management, and prevent the spread of invasive species. HIV/AIDS awareness and prevention programs for ENP staff and construction contractors will also be developed and implemented. Any resettlement impacts resulting from the Tourism Project will be identified and documented in compliance with OP 4.12. MET will provide alternative housing for the indigenous San

peoples at Government-funded official park employee housing sites or on lands transferred to the San prior to any eviction and/or demolition of their existing housing at Okakuejo. Transportation to the primary school at Ombika will be provided for the children of ENP staff living at Okakuejo.

MCC Funding that supports grants to conservancies will comply with MCC's Environmental Guidelines. Additionally, signed contracts between communal conservancies and investors will include benefits sharing and employment guarantees. Periodic and random audits of the performance of a subset of grant funding recipients will be conducted to ensure compliance with both MCC Environmental Guidelines and Namibian environmental requirements. Furthermore, targeted training to ensure that women and vulnerable groups have access to revenue-generating opportunities will be included as part of the overall Conservancy Support Activity. Disbursement of grant funds for wildlife relocation or joint venture activities on conservancy or national park lands and all activities supported by these funds shall comply with MCC's Environmental Guidelines, whose terms shall also be included in any manual produced for the distribution of such grant funds.

5. Donor Coordination.

Multiple donors, most notably KfW, GTZ and UNDP have provided technical assistance and funding for the infrastructure and capacity building needs of the national parks. UNDP through its "Strengthening the Protected Areas Network" ("*SPAN*") Project, aims to improve management effectiveness of Namibia's national system of protected areas and includes the development of the new Concession Policy (approved by Namibia in 2007), support to make this policy operational and support for financial transformation of park management. These activities will complement efforts to support and accelerate management reform of ENP. MCC's technical assessment of the staff housing centers was based on concept designs funded by UNDP. MCA-Namibia will coordinate efforts with UNDP's SPAN Project and will work with MET to implement the ENP Activity.

Multiple donors over the past ten years have provided technical assistance to conservancies in building governance, sustainable natural resource management, and tourism potential of existing and newly-formed conservancies. The most important donor assistance has come from USAID (through the recently completed LIFE-PLUS Project); the World Wildlife Fund for Nature; the Swedish International Development Agency (SIDA); Department for International Development (DFID); Danish International Development Agency (DANIDA); and the World Bank (through the Integrated Community-Based Ecosystem Management (ICEMA) Project). The Conservancy Support Activity will build on this previous work and benefit from the capacity and experience that has been developed. This Activity will also support joint ventures on conservancies complementing current efforts by the ICEMA Project.

6. USAID.

USAID has been a key donor in community-based natural resources management programs in Namibia. This Compact will build on the USAID-funded LIFE PLUS project which includes a focus on conservancy support.

7. Policy, Legal and Regulatory Reforms.

The Tourism Project aims to support and accelerate MET reforms in the management of Namibia's national park system. A portion of MCC Funding to support the ENP Activity will be contingent on meeting the applicable performance targets, which focus on management reforms of ENP in order to improve management. The Tourism Project will also provide technical assistance to support MET's efforts to meet these performance targets.

Namibia recently passed legislation to increase the bed night levy to 2 percent, which creates a sustainable mechanism for continued funding to NTB, especially as tourist arrivals grow. As tourism in Namibia grows, the returns from investments by the private sector will also grow and allow the private sector to play a greater role in marketing Namibian tourism products.

To facilitate implementation of the Conservancy Support Activity, Namibia will expedite the consideration and approval of leasehold applications submitted by conservancies under this Activity.

With respect to sector-specific policy reform commitments, Namibia has made several recent notable advancements in tourism, encompassing:

- Adoption of the Ministry of Environment and Tourism's Strategic Plan that establishes objectives and targets for the tourism sector in Namibia;
- Adoption of Etosha National Park Management Plan and Business Plan that establishes objectives and targets for ENP;
- Passage of the Environmental Management Bill into law establishing mandatory environmental review and mitigation procedures in Namibia (2007); and
- Policy on Tourism and Wildlife Concessions on State Land (2007).

D. AGRICULTURE PROJECT

1. Summary of Project and Activities.

MCC Funding will support investments aimed at achieving a sustainable increase in the economic performance of the agricultural sector (the "***Agriculture Project***"). Included in this Project are Activities that strengthen the land tenure system in the NCAs, introduce improved rangeland management practices, and strengthen animal health services, regulatory capacity, and livestock marketing efficiencies, all of which are expected to increase productivity and profitability of livestock production and sale. In addition, the Project will increase the volume, quality and value-added of INPs for export to regional and international markets.

The Activities to be undertaken in furtherance of the Agriculture Project are:

(a) Land Access and Management ("***Land Access and Management Activity***"): This Activity includes two sub-activities, one which focuses on improving the communal land regime (the "***Communal Land Support Activity***") and the second which focuses on introducing effective community-based rangeland management practices (the "***CBLRM Activity***").

Under the Communal Land Support Activity, MCC will fund: a comprehensive public awareness and outreach campaign to educate the public regarding their land rights; the streamlining of administrative procedures; a systematic verification and registration process that will result in the formalization of land rights in the NCAs; and capacity building for Communal Land Boards and other land administration institutions.

The CBLRM Activity aims to improve livestock quality and value by supporting training in community-based management of rangeland resources, herd management, and business management skills, including specific outreach to women in small ruminant production and marketing, among participating communities. In addition, these communities will be eligible to receive limited rangeland management infrastructure (e.g. water points, kraals) to support community rangeland management plans.

(b) Livestock Support (the "**Livestock Support Activity**"): This Activity involves: (i) construction of approximately five veterinary centers in the NCA and underserved areas, and rehabilitation of two quarantine camps in the Caprivi region; (ii) implementation of a traceability system to better meet the food safety requirements in local and external markets; and (iii) establishment of a fund to invest in post-farmgate improvements fostering greater efficiencies in livestock marketing, transport, and quarantine (the "**Livestock Market Efficiency Fund**"). The Livestock Market Efficiency Fund will also focus on diversifying market opportunities, including sanitary regulatory capacity building in the NCA. An operations manual will be developed by MCA-Namibia, and approved by MCC, which defines procedures, eligibility and selection criteria for the Livestock Market Efficiency Fund.

(c) Indigenous Natural Products (the "**INP Activity**"): The INP Activity's goal is to increase the volume, quality, and value addition of the natural products that Primary Producer Organizations ("**PPOs**") collect and harvest, and to advance their operational and business capacity. In addition, this Activity will improve market information to PPO's, provide capacity building for the Indigenous Plant Task Team ("**IPTT**") and support the formulation of regulations, policies and implementation plans to ensure the protection of indigenous knowledge. MCA-Namibia will develop, subject to MCC approval, a grants-making manual that will guide the review, selection and approval process of grants to PPOs. This Activity includes a fund to support research, testing and application of new innovations and services critical to the INP industry's immediate, short-term and long-term competitiveness (the "**INP Innovation Fund**"). MCA-Namibia will develop, subject to MCC approval, an operations manual to guide the management of the INP Innovation Fund.

2. Beneficiaries.

Direct and indirect beneficiaries of the Livestock Support and the Communal Land Support Activities are estimated at 135,000. In addition, over 24,000 households will benefit from improved veterinary services, and an estimated 1,800 households across 50 communities are anticipated to benefit from the rangeland management program.

The INP Activity is expected to increase income for up to 15,000 primary producers, a majority of whom are poor and female and for whom small increases in cash income are important supplementary household income for up to 75,000 individuals.

3. Sustainability.

The Land Access and Management Activity will directly support sustainability through the strengthening of structures and systems of land-related institutions that expedite land management processes at various levels of government. This includes access to basic information in the form of spatial data, topographic maps, and integrated information systems on land holdings that assist in decision-making, planning, and maintenance of proper registers of land rights. The institutional sustainability of the Communal Land Support Activity will depend upon the allocation of sufficient budgetary provisions and technically-skilled staff to the CLBs in the NCAs.

The veterinary service centers that will be constructed as part of the Livestock Support Activity are a public good which Namibia is committed to fully fund in terms of staff and operational costs. The Ministry of Agriculture's five-year budget plan provides for the financial needs of these five centers.

After the initial MCC-funded tagging exercise, the Livestock Traceability System will be a shared public-private cost whereby the GRN and cattle owners cover the costs of tags and operations of the information system. The GRN will cover the costs associated with information entry into the traceability database.

The sustainability of the Livestock Market Efficiency Improvement sub-activity will be achieved primarily by attracting and supporting successful private sector solutions. Some of these may not be sustained in the long term, but represent short-term measures that create incentives for farmers to overcome post-farmgate costs/losses. Potential long-term solutions include the establishment of more strategic market infrastructure in conjunction with the private sector and/or public sector.

The sustainability of the INP Activity is enhanced by the business capacities that are developed among the PPO clients, SME processors, traders, IPTT and the linkages they make with global buyers of raw, semi-processed and finished INPs. Significant economic growth opportunities for the Namibian INP industry have been documented by both researchers and private firms.

4. Environmental and Social Mitigation Measures.

The Agriculture Project is categorized under MCC's Environmental Guidelines as a Category B Project due to potential site-specific environmental and social impacts anticipated to result from land use management decisions, the construction and operation of veterinary centers and rehabilitation of quarantine camps. The Livestock Market Efficiency Fund, which involves an intermediate funding facility, is categorized under MCC's Environmental Guidelines as a Category D Activity. The INP Activity is categorized under MCC's Environmental Guidelines as a Category A Activity due to potentially significant environmental impacts anticipated to result from increased harvesting, utilization and export of species listed for protection under the Convention on the International Trade of Endangered Species ("*CITES*").

The Land Access and Management Activity will involve the development of EAs and EMPs to mitigate any adverse impacts. Participatory community-level decision making processes will further mitigate against adverse impacts. The Livestock Support Activity will involve an EA to analyze the environmental and social impacts of the veterinary centers, quarantine camps, and livestock marketing facilities and include the development of site-specific EMPs. The EMPs

will define the regulations and specific training needed to govern the use of Restricted Use Pesticides and other substances in compliance with Namibia's Environmental Management Act and MCC Environmental Guidelines. Any post-farmgate infrastructure built through the Livestock Market Efficiency Improvement sub-activity will involve the application of environmental screening and siting criteria and periodic audits of the performance of infrastructure funding recipients. The INP Activity will involve an EIA and an EMP to identify impacts and develop appropriate mitigation measures. These measures will address any potential environmental impacts that could result from the harvesting, utilization and export of species listed for protection under CITES.

Any resettlement impacts resulting from the Agriculture Project will be identified and documented in compliance with OP 4.12. In particular, the Land Access and Management Activity will clarify procedures to ensure that community decision making regarding restricting access to land includes measures to mitigate adverse impacts on livelihoods. HIV/AIDS awareness and prevention plans will be developed under the Agriculture Project and implemented in relation to construction activities. Furthermore, trafficking in persons for livestock-related labor under the Livestock Support Activity will need to be addressed through the development and implementation of anti-trafficking measures. Gender integration plans will be developed to provide design recommendations and to ensure women's participation throughout implementation for all Activities with a particular focus on including women in land and natural resources management decision making. The Livestock Market Efficiency Fund and the INP Innovation Fund will comply with MCC's Environmental Guidelines, whose terms will be included in the grants-making manuals. Increased demand for INPs is likely to provide significant income benefits to female-headed households and vulnerable groups such as the San people.

5. Donor Coordination.

The Activities of the Agriculture Project build on other donors' previous initiatives in the livestock and land management sub-sectors. The Livestock Activity will build upon previous and current donor support to improve livestock marketing by communal farmers. The Communal Land Support sub-activity will build upon other GRN and donor-funded land reform initiatives to ensure coordination and avoid duplication. Community-based Rangeland and Livestock Management sub-activities build upon several successful community-led solutions to natural resources management. Various donors have supported the commercialization of natural products, namely USAID, the EU, the GEF facility, the FAO, and Oxfam. Previous programs in this sector have largely targeted the upper end of the value chain, and MCC Funding will complement these efforts by working closely with the first-stage primary producers.

6. USAID.

MCC Funding will build on USAID-funded projects in natural resources management, specifically the natural products sector.

7. Policy, Legal and Regulatory Reforms.

Namibia has committed to adopt the "Access to Genetic Resources and Associated Traditional Knowledge" draft bill into law, which shall reflect, and not deviate in a significant manner from, the terms of CITES.

E. IMPLEMENTATION FRAMEWORK

1. Overview.

Namibia will generally implement the Program through its existing government systems. The National Planning Commission, a ministry-level government agency charged with directing development resources, has been confirmed as the designated accountable entity. As such, it will have overall responsibility for the oversight, management and implementation of the Program. A program implementation unit, within NPC will serve as the management unit and will be responsible for the day-to-day administration of this Compact. In addition, the Ministries of Education; Agriculture, Water and Forestry; Environment and Tourism; and Lands and Resettlement, and other governmental institutions, will undertake certain aspects of the implementation of specific Projects to ensure integration, coordination and sustainability of the MCC investments.

2. MCA-Namibia.

(a) Board of Directors.

(i) Composition.

The NPC Commissioners serve as the MCA-Namibia Board of Directors. The Commission currently consists of 14 members, six of whom are ministers specified by the NPC's enabling statute, with the remaining members appointed by the President of Namibia. As the six specified ministers do not include representatives from the MoE or the MET, Namibia agrees that two of the appointed commission member slots will be filled with representatives from these ministries. In addition, Namibia has agreed that the remaining six appointed slots will be filled, as their current terms expire, with civil society and private sector representatives selected through a process that allows the private sector and civil society groups whose interests relate to the Projects to nominate potential candidates. The below ministries will be represented by the Minister or a delegate no lower than the Permanent Secretary level:

- National Planning Commission (Chairperson is the Director General)
- Ministry of Agriculture, Water and Forestry
- Ministry of Finance
- Ministry of Trade and Industry
- Ministry of Works and Transport
- Ministry of Regional and Local Government, Housing and Rural Development
- Ministry of Education
- Ministry of Environment and Tourism

The existing appointees to the NPC Commission, as of the date hereof, are civil society and private sector members, selected by the President based on their expertise and the sectors they represent are listed below:

- Representative of the Namibia Chamber of Commerce and Industry
- Founder, Desert Research Foundation of Namibia (DRFN)
- Director of Primary Health Care, Ministry of Health and Social Services
- Deputy Director of Environmental Affairs, Ministry of Environment and Tourism
- President, National Union for Namibia Workers (NUNW)
- Secretary General, National Youth Council of Namibia
- Head of ETSIP, Ministry of Education
- CEO, Federation of Namibia Tourism Associations (FENATA)

Since there is an equal number of Board members, for voting purposes, the Director General will hold a tie-breaking vote.

(ii) Roles and Responsibilities. The roles and responsibilities of the MCA-Namibia Board will be as set forth in the bylaws of MCA-Namibia annexed to the Program Implementation Agreement (to the extent not inconsistent with the NPC Act).

(b) Management Unit.

(i) Composition.

Appointed by the Director General of the NPC, with MCC's approval, MCA-Namibia will be managed by a Chief Executive Officer ("CEO"). Senior management will also include the following officers: two Deputy CEOs; Director of Administration and Finance; Project Directors for Education, Tourism and Agriculture; Environment and Social Assessment Director; Monitoring and Evaluation Director; Legal Advisor; and Procurement Manager. In addition to other standard operational staff, much of the technical expertise will come from the implementing entities. MCA-Namibia will support limited staff within the Ministry of Education, Ministry of Agriculture, Ministry of Environment and Tourism, and the Namibia Tourism Board, who will support Compact Activities while ensuring close integration with national priorities and strategies.

(ii) Roles and Responsibilities.

The roles and responsibilities of the Management Unit will be set forth in the bylaws of MCA-Namibia annexed to the Program Implementation Agreement.

3. Stakeholder/Consultative Committees.

MCA-Namibia will rely on existing consultative mechanisms for each of the Projects. For the Education Project, this will be the ETSIP Programme Coordinating Committee and the NTA Board. For the Tourism Project, MCA-Namibia will consult with the Namibian Association for Conservancy Support Organisations (NACSO). For the Agriculture Project, consultations will be with the Technical Committee on Land and Social Issues, the Veterinary Cordon Fence (VCF) Task Force, farmers' organizations, and the Indigenous Plants Task Team (IPTT).

These committees include members from the public and private sectors and civil society. They are broad-based and offer relevant technical expertise plus a solid understanding of socio-economic and environmental realities in Namibia.

The MCA-Namibia Project Directors will present Program-related matters to these consultative bodies and report back to the MCA-Namibia Board on the advice provided by them. The committees may also pro-actively approach MCA-Namibia with their concerns related to the Program design and implementation. Regular, periodic interaction between MCA-Namibia and the consultative bodies is anticipated.

4. Implementing Entities.

Subject to the terms and conditions of this Compact and any other supplemental agreement entered into in connection with this Compact, MCA-Namibia may engage one or more entities of Namibia to implement and carry out any Project or Activity (or a component thereof) to be carried out in furtherance of this Compact (each, an **"Implementing Entity"**). Namibia will ensure that MCA-Namibia enters into an agreement with each Implementing Entity, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of such Implementing Entity, the MCA-Namibia officer to whom such Implementing Entity will report and other appropriate terms and conditions (each an **"Implementing Entity Agreement"**).

5. Fiscal Agent.

Unless MCC otherwise agrees in writing, Namibia will ensure that MCA-Namibia engages a fiscal agent (a **"Fiscal Agent"**), who will be responsible for assisting MCA-Namibia with its fiscal management and assure appropriate fiscal accountability of MCC Funding, and whose duties will include those set forth in the Program Implementation Agreement.

6. Procurement Agent.

Unless MCC otherwise agrees in writing, Namibia will ensure that MCA-Namibia engages one or more procurement agents (each, a **"Procurement Agent"**) to carry out and certify specified procurement activities in furtherance of this Compact. The roles and responsibilities of each Procurement Agent will be set forth in the Program Implementation Agreement or such agreement as MCA-Namibia enters into with each Procurement Agent, which agreement shall be in form and substance satisfactory to MCC. Any Procurement Agent will adhere to the procurement standards set forth in the MCA-Namibia Procurement Rules and ensure procurements are consistent with the procurement plan adopted by MCA-Namibia pursuant to the Program Implementation Agreement, unless MCC otherwise agrees in writing.

ANNEX II

MULTI-YEAR FINANCIAL PLAN SUMMARY

This Annex II to this Compact (the "*Financial Plan Annex*") summarizes the Multi-Year Financial Plan for the Program.

1. General.

A multi-year financial plan summary ("*Multi-Year Financial Plan Summary*") is attached hereto as Exhibit A. By such time as specified in the PIA, Namibia will adopt, subject to MCC approval, a Multi-Year Financial Plan that includes, in addition to the multi-year summary of estimated MCC Funding and Namibia's contribution of funds and resources, an estimated draw-down rate for the first year of the Compact Term based on the achievement of performance milestones, as appropriate, and the satisfaction or waiver of conditions precedent. Each year, at least thirty (30) days prior to the anniversary of the date on which this Compact enters into force, the Parties shall mutually agree in writing to a detailed budget for the upcoming year of the Program, which shall include a more detailed budget for such year, taking into account the status of the Program at such time and making any necessary adjustments to the Multi-Year Financial Plan.

2. Government LMIC Contribution.

During the Compact Term, Namibia shall make contributions, relative to its national budget and taking into account prevailing economic conditions, as are necessary to carry out Namibia's responsibilities and obligations under Section 2.6(a) of this Compact. These contributions may include in-kind and financial contributions (including obligations of Namibia on any debt incurred toward meeting these contribution obligations). In connection with this obligation Namibia has developed a budget over the five year term of the Compact to compliment MCC Funding through budget allocations to its sectors in education, tourism and agriculture. Namibia anticipates making contributions from its national budget of approximately US\$165,483,800 over the Compact Term. Such contribution shall be in addition to Namibia's spending allocated toward such Project Objectives in its budget for the year immediately preceding the establishment of this Compact. Namibia's contribution remains subject to any legal requirements in Namibia for the budgeting and appropriation of such contribution, including approval of Namibia's annual budget by its Parliament. The Parties may set forth in appropriate supplemental agreements certain requirements regarding this Government contribution, which requirements may be conditions precedent to the Disbursement of MCC Funding.

EXHIBIT A
MULTI-YEAR FINANCIAL PLAN SUMMARY

(US\$)							
Component	CIF	Year 1	Year 2	Year 3	Year 4	Year 5	Total
1. Education Project							
(a) Improving the Quality of General Education	5,775,732	3,842,838	15,629,051	30,725,468	17,086,640	3,797,031	76,856,760
(b) Vocational and Skills Training	1,393,045	1,673,534	5,980,430	11,552,609	7,643,114	928,697	29,171,429
(c) Improving Access to and Management of Textbooks	205,720	3,582,549	5,346,299	1,818,903	1,818,903	1,818,903	14,591,277
(d) Regional Study and Resource Centers	1,545,394	52,160	2,094,525	8,324,161	7,817,049	1,052,263	20,885,552
(f) Access to Tertiary Education Finance	-	838,940	632,583	632,565	-	-	2,104,088
(g) Cross-Project Support (HIV/AIDS Plans/Training)	56,405	311,094	311,094	273,490	254,689	160,680	1,367,452
Sub-Total	8,976,296	10,301,115	29,993,982	53,327,196	34,620,395	7,757,574	144,976,558
2. Tourism Project							
(a) Improving Management and Infrastructure in Etosha National Park	999,971	2,049,000	5,570,200	15,968,535	8,765,558	7,159,725	40,512,989
(b) Marketing Namibia in Tourism	500,000	1,397,223	2,365,623	2,417,186	1,575,619	-	8,255,651
(c) Ecotourism Development for Communal Conservancies	975,174	1,266,757	5,102,867	4,979,079	4,450,017	1,416,757	18,190,651
Sub-Total	2,475,145	4,712,980	13,038,690	23,364,800	14,791,194	8,576,482	66,959,291
3. Agriculture Project							
(a) Land Access and Management	-	181,390	7,268,360	6,604,130	4,936,130	2,168,017	21,158,027
(b) Livestock	1,369,139	475,468	8,980,464	5,985,447	2,018,000	268,000	19,096,518
(c) Indigenous Natural Products	-	906,192	1,710,024	1,875,994	1,475,994	742,571	6,710,775
Sub-Total	1,369,139	1,563,050	17,958,848	14,465,571	8,430,124	3,178,588	46,965,320
4. Program Management and Administration							
(a) MCA-Namibia Administration	5,000,000	3,200,000	3,200,000	3,200,000	3,200,000	3,200,000	21,000,000
(b) Financial Management and Procurement Controls	1,000,000	3,000,000	3,000,000	3,000,000	3,000,000	3,000,000	16,000,000
(c) Financial Audits	-	400,000	400,000	400,000	400,000	400,000	2,000,000
Sub-Total	6,000,000	6,600,000	6,600,000	6,600,000	6,600,000	6,600,000	39,000,000
5. Monitoring and Evaluation							
(a) Monitoring and Evaluation	722,595	1,774,617	1,027,399	1,024,139	1,006,920	1,020,977	6,576,647
Sub-Total	722,595	1,774,617	1,027,399	1,024,139	1,006,920	1,020,977	6,576,647
GRAND TOTAL	19,543,175	24,951,762	68,618,919	98,781,706	65,448,633	27,133,621	304,477,816

ANNEX III

DESCRIPTION OF MONITORING AND EVALUATION PLAN

This Annex III (this "**M&E Annex**") generally describes the components of the Monitoring and Evaluation Plan ("**M&E Plan**") for the Program.

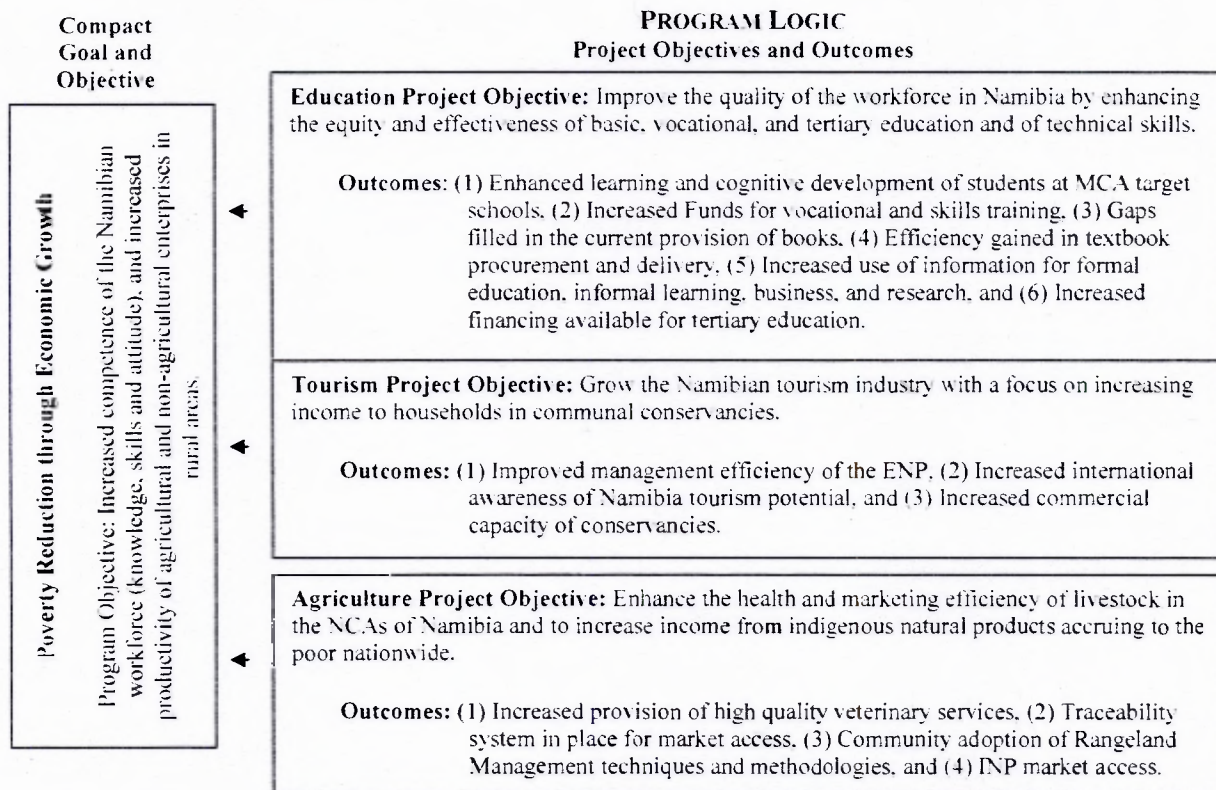
1. Overview.

MCC and Namibia will formulate, agree to and Namibia will implement, or cause to be implemented, an M&E Plan that specifies (a) how progress toward the Program goal and objectives will be monitored, ("**Monitoring Component**"), (b) process and timeline for the monitoring of planned, ongoing, or completed Project Activities to determine their efficiency and effectiveness, and (c) a methodology for assessment and rigorous evaluation of the outcomes and impact of the Program ("**Evaluation Component**"). Information regarding the Program's performance, including the M&E Plan, and any amendments or modifications thereto, as well as progress and other reports, will be made publicly available on the website of MCA-Namibia and elsewhere.

2. Program Logic.

The M&E Plan will be built on a series of logic models which illustrate how the Program, Projects and Project Activities contribute to poverty reduction and economic growth in Namibia. The chart below provides a visual representation of each Project's objectives and outcome statement that this Compact will seek to achieve. In sum, the goal of the Program is to contribute to economic growth and poverty reduction among targeted beneficiaries primarily in the northern area of Namibia.

The following chart stating the Project objectives and the outcomes illustrates how each of the Projects addresses poverty reduction in the applicable sectors:



3. Monitoring Component.

To monitor progress toward the achievement of the impact and outcomes, the Monitoring Component of the M&E Plan will identify (a) the indicators, (b) the definitions of the indicators, (c) the sources and methods for data collection, (d) the frequency for data collection, (e) the party or parties responsible, and (f) the timeline for reporting on each indicator to MCC.

Further, the Monitoring Component will track changes in the selected indicators for measuring progress towards the achievement of the objectives during the Compact Term. Before the initiation of implementation activities for each Project, MCA-Namibia will collect baseline data on the selected indicators or verify already collected baseline data.

(a) **Indicators.** The M&E Plan will measure the results of the Program using quantitative, objective and reliable data ("**Indicators**"). Each indicator will have benchmarks that specify the expected value and the expected time by which that result will be achieved ("**Target**"). The M&E Plan will be based on a logical framework approach that classifies indicators as goal, outcome, output, and process milestones. The Compact Goal indicators ("**Goal Indicators**") will measure the general contribution of the Projects to the national economic growth and poverty reduction. Second, the Project objective and outcome ("**Project Objective and Outcome Indicators**") will measure the final result of each Project. Third, Output Indicators and process milestones ("**Project Activity Indicators**") will measure the early and intermediate results of the Project Activities. For each Project Objective, Outcome, and Activity Indicator, the M&E Plan will define a strategy for obtaining and verifying the value of such indicator prior to undertaking any activity that affects the value of such Indicator (such value, a

“**Baseline**”). All indicators will be disaggregated by gender, income level and age, and beneficiary types to the extent practicable. Subject to prior written approval from MCC, MCA-Namibia may add indicators or refine the definitions and Targets of existing indicators.

(i) Goal. The M&E Plan will contain the Goal Indicators listed in the table below specifying the definition, baseline, and end of Compact Target for each.

Goal Level				
Result	Indicator	Definition of Indicator	Baseline	Target
Economic Growth and Reduction of Poverty	Poverty Rate ¹⁰	Relative poverty :- Percent of households devoting more than 60 percent of total household income to food expenses ¹¹	28%	20%
		Extreme poverty: Percentage of household devoting more than 80 per cent of total income to food expenses ¹²	4%	2%
	Unemployment Rate ¹³	Percentage of economically active population who are currently unemployed.	35%	33.6%
	Average Income per Household ¹⁴	The average annual household consumption expenditures in cash, in-kind and non consumption expenditures such as savings and investment and other non consumption disbursements (corrected for CPI).	US\$6,031	TBD

(ii) Project Objective, Outcome and Activity Indicators. The M&E Plan will contain Project Objective, Outcome, and Activity Indicators which will measure the results for the 3 (three) main Projects and are listed below with their definitions, baseline and targets. Prior to the initiation of implementation of a Project Activity, MCC and MCA-Namibia will agree on a final set of Activity Indicators. The M&E Plan will contain these indicators or will be amended to contain these indicators.

¹⁰ Definitions of Relative and Extreme poverty inline with that of the NDP 3.

¹¹ Baseline from the National Development Plan 3 (NDP 3). Target taken from the NDP 3 and is thus inline with National development objectives and goals.

¹² Baseline from the NDP 3.

¹³ Target taken from the *National Development Plan 3 (NDP 3)* and is thus inline with National development objectives and goals.

¹⁴ Namibia Household Income and Expenditure Survey 2003/2004 Preliminary Report, March 2006. The stated average annual adjusted income per household is NS42,129 with per capita income of NS8,556 and adjusted per capita income of NS10,357. The baseline figure uses an average NAD-US\$ exchange rate for 2003/04 of NS 6,985 : US\$1.

Project: Education ¹⁵				
Objective Level				
Result	Indicator	Definition of Indicator	Baseline	Year 5
Enhanced learning and cognitive development of students	Transition Rate of 5 th and 8 th Grade Students	Number of 5 th grade students who pass the national transitional examinations for 5 th grades ¹⁶	1,528	1,554
		Number of 8 th grade students who pass the national transitional examinations for 8 th grades ¹⁷	2,982	3,018
	National Pass Rate of JSC and NSSC Learners in the Basic Subjects of the DNEA Examination ¹⁸	Percentage of learners achieving D or better in mathematics, life science, physical science, and English as a second language on JSC (grade 10)	43%	53% ¹⁹
		Percentage of learners achieving D or better in mathematics, life science, physical science, and English as a second language on NSSC Ordinary Level exams (grade 12)	31%	41%
Increased supply level of skills demanded by employers	Employment rate of COSDEC participants in the national industries	Percentage completing COSDEC who are full time or self employed in the sector of studies within the national industries one year of after completion of required course of studies in the COSDEC program	49%	70%
	Employment rate of other vocational skill development programs in national industries	Percentage who are full time or self-employed one year after completion of vocational skill training programs	40%	75%

¹⁵ Education indicators with target from ETSIP will be adjusted in accordance with the annual ETSIP reviews.

¹⁶ In the absence of disaggregated data specific for the 47 target schools the baseline represents the national average for all schools offering grade 5, calculated for 36 schools, out of the target 47 that offers grade 5. To be revised once disaggregated data for the 47 target schools is available. Target is based on an average annual rate of increase of 0.329% per annum for transition of 5th graders. To be revised once disaggregated data for the 47 target schools is available. Data from EMIS 2007.

¹⁷ In the absence of disaggregated data specific for the 47 target schools the baseline represents the national average for all schools offering grade 8, calculated for all 47 schools offering grade 8. To be revised once disaggregated data for the 47 target schools is available. Target is based on an average annual rate of increase of 0.241% per annum for transition of 8th graders. To be revised once disaggregated data for the 47 target schools is available. Data from EMIS 2007.

¹⁸ ETSIP target for 2011 = 52.1%. ETSIP targets are being reviewed so this target will be revised once ETSIP data are available (July 08).

¹⁹ ETSIP target for 2011 = 62.9%. ETSIP targets are being reviewed so this target will be revised once ETSIP data are available (July 08).

Outcome Level					
Result	Indicator	Definition of Indicator		Baseline	Year 5
Activity: Improving the Quality of General Education					
Enhanced learning and cognitive development of students at MCC target schools	DNEA examination results (MCC target schools) ²⁰	Percentage of learners at MCC target schools achieving D or better in mathematics, life science, physical science, and English JSC exam (grade 10) ²¹		43%	53%
	Transition rate of 5 th and 8 th grade students (MCC target schools)	Percentage of 5 th and 8 th grade students passing the national transition examination in MCC target schools	5th	1,528	1,554
			8th	2,982	3,018
	Survival Rate	Percentage of 5 th , 8 th and 11 th grade students who have remained in each phase of school since first grade	5th ²²	94.1%	94.3%
			8th ²³	80.7%	84.6%
			11th ²⁴	38.6%	40.0%
	Repetition Rate	Percentage of 1 st , 5 th and 8 th grade students who have dropped out or repeated grade levels	1st ²⁵	19.7%	19.5%
			5th ²⁶	22.8%	22.6%
			8th ²⁷	21.1%	21.0%

²⁰ This is representative of the national average of all schools. A baseline will be established for the MCC target schools.

²¹ MCC target school figures only include junior secondary as most MCC target schools only offer this level to date. As more schools begin offering senior secondary, an indicator may be added for the NSSC.

²² Target based on annual average rate of change (for 2000-2006) of 0.04%; to be revised against revised ETSIP targets. Data from EMIS 2007.

²³ Target based on annual average rate of change (for 2000-2006) of 0.94%; to be revised against revised ETSIP targets. Data from EMIS 2007.

²⁴ Target based on annual average rate of change (for 2000-2006) of 0.68%; but to be revised against revised ETSIP targets. Data from EMIS 2007.

²⁵ Target based on annual average rate of change (for 2000-2006) of 0.341%; but to be revised against revised ETSIP targets. Data from EMIS 2007.

²⁶ Target based on annual average rate of change (for 2000-2006) of 0.15%; but to be revised against revised ETSIP targets. Data from EMIS 2007.

²⁷ Target based on annual average rate of change (for 2000-2006) of 0.132%; but to be revised against revised ETSIP targets. Data from EMIS 2007.

Outcome Level				
Result	Indicator	Definition of Indicator	Baseline	Year 5
Activity: Improving Vocational and Skills Training				
Enhanced workforce skills	Completion rate of COSDEC participants ²⁸	Percentage of total participants who completed required course work within the specified time period of the program	70%	85%
	Completion rate of participants of other Vocational skill training programs	Percentage of total participants of other Vocational skill training who completed required activities within the specified time period of the program	TBD	80%
	COSDEC enrollment Rate	Total COSDEC participant enrollment within a year	1,150	3,000
	Vocational Skills training enrollment rate ²⁹	Total MCC assisted Vocational Skill training program enrollment within a year	1,670	2,171
	Annual Revenue to NTF	Funds contributed to NTF from Employers (Private sector training levy and other sources) (2008 US\$)	US\$0	US\$1,600,000
Activity: Upgrading Access to and Management of Adequate Textbooks				
Gaps filled in the current provision of books	% of schools meeting the target of Textbook Students ratio ³⁰	Total number of schools as a percentage of the total number of national schools who are meeting the targeted student textbook ratio of 1:2	TBD	TBD
Efficiency in textbook procurement and delivery	Textbook Inventory Turning Rate ³¹	% of textbook inventory delivered on time to schools out of the total textbooks procured for a given year	TBD	95%
Activity: Investment in Regional Study and Resource Centers				
Increased use of information for formal education, informal learning, business, and research	Resource and learning materials loaned out per year ³²	The total number of library books loaned out per year in the MCA assisted libraries	33,921	84,406
	Total number of visits to new RSRCs	Total number of annual visits to 3 new MCC-funded RSRCs	31,000	100,000

²⁸ ETSIP indicator with a baseline target for 2008.

²⁹ Year 5 Target is based on a 30% increase of the baseline.

³⁰ Baseline to be determined during MCC funded textbook survey. Target of 1 textbook per every 2 students inline with ETSIP target and can be amended against revised ETSIP targets.

³¹ Baseline to be determined during MCC funded textbook survey.

³² Baseline from MoE. Year 5 target is based on an annual increase of 20%.

Outcome Level				
Result	Indicator	Definition of Indicator	Baseline	Year 5
Activity: Expanding and Improving Access to Tertiary Finance				
Increased financing available for tertiary education	% of qualified financial aid applicants receiving loans for the school year	Percentage of the total qualified financial aid applicant enrolled in tertiary institutions who actually received students loans for the school year	20%	60%
	Repayment rates ³³	Percentage of loans awarded under the new system being paid on time	20%	75%

Project: Tourism				
Objective Level				
Result	Indicator	Definition of Indicator	Baseline	Year 5
Growth of tourism industry targeting poor beneficiaries	Annual total tourist arrivals in Namibia by origin ³⁴	Total number of tourist arrivals recorded per annum (excluding South African and Angolan multi purpose business-tourism visits)	864,451	1,057,000
	Total Tourism Industry employment ³⁵	Total direct employment created within the tourism industry by travel and tourism companies excluding government agencies and supplier company employments	21,508	24,573
	Increased Household (HH) income ³⁶	Increases in income of HH in targeted communal conservancies areas	27,885	41,827

³³ Baseline based on loan repayment rate for 2007.

³⁴ NTB data.

³⁵ Baseline data is based on preliminary figures from Namibia's 2007 Tourism Satellite Accounts (TSA). The year 5 target is based on projected 2.7% annual growth.

³⁶ Baseline is based on average income to conservancy households for the 31 MCC target conservancies at an average US\$-NAD exchange rate for 2007 of US\$1 : NAD 7.195. The target is project as 50% growth of the baseline. To be confirmed before Compact entry into force.

Outcome Level					
Result	Indicator	Definition of Indicator		Baseline	Year 5
Activity: Improving Management and Infrastructure in Etosha National Park					
Improved management and management efficiency of the ENP	Total ENP revenue ³⁷	Annual total revenue generated by ENP including gate receipts and concession fees (2007 US\$)		2,963,538	4,142,529
	Park attendance ³⁸	The annual total park attendance for ENP based on park entry records		200.000	293.000
Activity: Marketing Namibia in Tourism					
Increased awareness of Namibia's tourism products	Number of tourist arrivals from new targeted markets	Total number of tourist arrivals recorded for new targeted markets (target expressed as a percent change over the baseline) ³⁹		19,342	30,947 ⁴⁰
Activity: Ecotourism Development for Communal Conservancies					
	Conservancy benefits to households and community	Fraction of conservancy revenues paid out as household income dividends plus amounts invested in community projects (schools, clinics, social services) and new enterprise expansion. Figure is the average across all MCC-supported conservancies.		34% ⁴¹	75%
Increased commercial capacity of conservancies	Total revenue to targeted registered conservancies ⁴²	The total revenue generated by all conservancies supported by MCC--including in-kind revenues (target expressed as a percent change over the baseline, 2008 US\$)		2,952,175	4,149,422
	Conservancy sustainability	The number of conservancies achieving a positive net income ⁴³	Of 17 established conservancies (registered before Aug 1, 2003)	9 ⁴⁴	16

³⁷ Baseline based on CPI adjusted total revenue for 2007 at an average US\$-NAD exchange rate for 2007 of US\$1 : NAD 7.195.

³⁸ Baseline data from MET. Year 1 target is the same as the baseline as MCA interventions will only impact from Year 2. The year 5 target is based on annual 10% growth. The target will be revised based on the outcome of the MCC-funded Carrying Capacity study for ENP.

³⁹ Baseline refers only to USA arrivals.

⁴⁰ The year 5 Target is based on a 60% increase from the baseline.

⁴¹ Baseline is an estimate. Actual figure will be determined before Compact entry into force.

⁴² Baseline data is based on 23 registered conservancies, out of the 31 proposed for MCC support, that generate revenue (US\$1 = N\$ 7.195). The remaining 8 conservancies are emerging with high potential for revenue generation. The baseline is corrected for the 2007 average CPI.

⁴³ The calculation of profit (profit = revenue – cost) will include all relevant costs such as in kind services from donors (*i.e.* negotiating assistance and auditing services) and amortization of capital investment.

⁴⁴ Baseline is an estimate. Actual figure will be determined before Compact entry into force.

Outcome Level					
Result	Indicator	Definition of Indicator		Baseline	Year 5
Increased commercial capacity of conservancies	Conservancy sustainability	The number of conservancies achieving a positive net income	Of 14 beginning conservancies (registered after Aug 1, 2003)	0 ⁴⁵	7

Project: Agriculture					
Objective Level					
Result	Indicator	Definition of Indicator		Baseline	Year 5
Increased health of cattle	Mortality Rate ⁴⁶	Percentage of the total population that dies of diseases per annum NCAs		0.03%	TBD
Enhanced and efficient marketing system	Annual Turnover ⁴⁷ (formal Market)	Number of cattle slaughtered in formal markets (public and private abattoirs) in the NCAs		19,000	28,000
Increased INP growth with benefits accruing to households	Percent increase in INP revenue	Percent increase in INP revenue from base year (corrected for CPI inflation) among members of PPOs targeted for assistance		na	50%

⁴⁵ Baseline is an estimate. Actual figure will be determined before Compact entry into force.

⁴⁶ Baseline is based on total mortality as percentage of total estimated cattle population in the NCA. Data will be revised against the outcome of the MCC funded livestock survey.

⁴⁷ Baseline data from Meatco. Target is projected at 8% annual growth.

Outcome Level				
Result	Indicator	Definition of Indicator	Baseline	Year 5
Activity: Livestock Activity				
Provision of High Quality Veterinary Services	CBPP vaccination Rate ⁴⁸	Percentage of livestock in the NCAs vaccinated against CBPP	78%	95%
	Frequency of NCA homestead/village visits by DVS	Average number of service contacts per household per year by DVS	1	2
Efficient Traceability system	Total livestock movement transactions recorded ⁴⁹	Total recorded livestock movements through transit holdings such as market places and exhibition sites	TBD	TBD
	Number of livestock tagged in the NCAs	Number of livestock tagged in the NCAs under MCC mass tagging (cumulative) and subsequent owner tagging	0	1,170,000
Enhanced efficiency of livestock quarantine and marketing	Post farmgate cost reduction	The cost saving to herders from improvements in the efficiency of marketing, transport, and quarantining of livestock	0	50% ⁵⁰
Activity: Land Access and Management Activity				
Community adoption of Rangeland Management techniques and methodologies	Value of livestock sold by communities in formal markets ⁵¹	Average percent difference in total value of livestock sold in previous year between target communities adopting techniques and comparison communities	19%	50%
	Adoption rate of improved rangeland management methodology and techniques	Percentage of targeted communities practicing appropriate rangeland management techniques and methodology	0%	40%
Activity: Indigenous Natural Products Activity				
Market access for INPs	Percentage of targeted PPOs granted certification	Percentage of targeted PPOs certified for organic production and fair trade status	0	67%

(b) Data Collection and Reporting. The M&E Plan will establish guidelines for data collection and reporting, and identify the responsible parties. Compliance with data collection and reporting timelines will be conditions for disbursements for the relevant Project Activities as set forth in the Program Implementation Agreement. The M&E Plan will specify the data collection methodologies, procedures, and analysis required for reporting on results at all levels.

⁴⁸ Baseline data from Directorate of Veterinary Services (DVS), MAWF. Target is projected at 4% annual growth.

⁴⁹ Baselines and targets to be determined during the MCC-funded livestock survey.

⁵⁰ Estimation from MCC ERR calculation.

⁵¹ Baseline calculated as percent difference in the average value of cattle sold in 2006 and 2007. Data from Mearco.

The M&E Plan will describe any interim MCC approvals for data collection, analysis, and reporting plans.

(c) Data Quality Reviews. As determined in the M&E Plan or as otherwise requested by MCC, the quality of the data gathered through the M&E Plan will be reviewed to ensure that data reported are as valid, reliable, and timely as resources will allow. The objective of any data quality review will be to verify the quality and the consistency of performance data, across different implementation units and reporting institutions. Such data quality reviews also will serve to identify where those levels of quality are not possible, given the realities of data collection.

(d) Management Information System. The M&E Plan will describe the information system that will be used to collect data, store, process and deliver information to relevant stakeholders in such a way that the Program information collected and verified pursuant to the M&E Plan is at all times accessible and useful to those who wish to use it. The system development will take into consideration the requirement and data needs of the components of the Program, and will be aligned with MCC existing systems, other service providers, and ministries.

(e) Role of MCA-Namibia. The monitoring and evaluation of this Compact spans across three discrete Projects and will involve a variety of governmental, non-governmental, and private sector institutions. MCA-Namibia holds full responsibility for implementation of the M&E Plan. MCA-Namibia will oversee all Compact-related monitoring and evaluation activities conducted by each of the Projects, ensuring that data from all implementing entities is consistent, and accurately reported and aggregated into regular Compact performance reports as described in the M&E Plan.

4. Evaluation Component.

The Evaluation Component of the M&E Plan will contain three types of evaluations: Impact Evaluations, Project Performance Evaluations, and Special Studies. Plans for each type of evaluation will be finalized before MCC Disbursement for specific Program or Project activities. The Evaluation Component of the M&E Plan will describe the purpose of the evaluation, methodology, timeline, required MCC approvals, as well as the process for collection and analysis of data for each evaluation. The results of all evaluations will be made publicly available in accordance with MCC Guidelines for Monitoring and Evaluation Plans.

(a) Impact Evaluation: The M&E Plan will include a description of the methods to be used for impact evaluations and plans for integrating the evaluation method into project design. Based on in-country consultation with stakeholders, the following strategies outlined below were jointly determined as having the strongest potential for rigorous impact evaluation. The M&E Plan will further outline in detail these methodologies. Final impact evaluation strategies are to be jointly determined before the approval of the M&E Plan and before entry into force of this Compact. The following is a summary of the potential impact evaluation methodologies:

(i) Agriculture Project: The CBLRM Activity will be subjected to rigorous impact evaluation. The evaluation will address the effectiveness of the Activity in improving herders' value, grade and incomes. As the Activity is envisioned as a pilot, the evaluation will

contribute to the justification for scaling up the Activity through arrangements outside this Compact. The evaluation will include measurement of outcomes of communities outside the target communities. The appropriate rigorous methodology will be used.

(ii) Education Project: The purpose of the impact evaluation will be to assess the effectiveness of the Education Quality Activity through: (1) the quantity of education services provided; (2) the quality of education services provided; and (3) learning outcomes. The evaluation will include measurements taken from non-MCC target schools to establish a comparison group.

The evaluation may also address the Textbook Activity and other activities that may improve school supervision.

(b) Projects Evaluation. The M&E Plan will make provision for project level evaluations. MCA-Namibia, with the prior written approval of MCC, will engage independent evaluators to design the Project Performance Evaluations to be conducted at the end of each Project or MCC may engage the independent evaluators. The Project Performance Evaluations must at a minimum (i) evaluate the efficiency and effectiveness of the Project Activities; (ii) estimate, quantitatively and in a statistically valid way, the causal relationship between the expected impact (to the extent possible), the intended outcomes and outputs; (iii) determine if and analyze the reasons why this Compact Goal, Program Objective and Project Objectives were or were not achieved; (iv) identify positive and negative unintended results of the Program; (v) provide lessons learned that may be applied to similar projects; (vi) assess the likelihood that results will be sustained over time; and (vii) any other guidance and direction that will be provided in the M&E Plan. To the extent engaged by MCA-Namibia, such an independent evaluator will review the plans for the collection of baseline data and, as applicable, plans for selecting comparison groups.

(i) Special Studies. The M&E Plan will include a description of the methods to be used for Special Studies funded through this Compact or by MCC.

Plans for conducting the Special Studies will be determined jointly between MCA-Namibia and MCC before the approval of the M&E Plan and before entry into force of this Compact. The M&E Plan will identify and make provision for any other special studies, *ad hoc* evaluations, and research that may be needed as part of the monitoring and evaluating of this Compact. Either MCC or MCA-Namibia may request special studies or *ad hoc* evaluations of Projects, Project Activities, or the Program as a whole prior to the expiration of the Compact Term. When MCA-Namibia engages the evaluator, the evaluator will be an externally contracted and independently source selected by MCA-Namibia. The aforementioned engagement will be subject to the prior written approval of MCC, following a tender in accordance with the MCA-Namibia Procurement Rules, and in accordance with any relevant Implementation Letter or supplemental agreement. Contract terms must ensure non-biased results and the publication of results.

(c) Request for Ad Hoc Evaluation or Special Study: If MCA-Namibia requires an *ad hoc* independent evaluation or special study at the request of Namibia for any reason, including for the purpose of contesting an MCC determination with respect to a Project or Project Activity or to seek funding from other donors, no MCC Funding or MCA-Namibia

resources may be applied to such evaluation or special study without MCC's prior written approval.

5. Other Components of the M&E Plan.

In addition to the Monitoring and Evaluation Components, the M&E Plan will include the following components for the Program, Projects and Project Activities, including, where appropriate, roles and responsibilities of the relevant parties and providers:

(a) Costs. A detailed cost estimate for all components of the M&E Plan.

(b) Assumptions and Risks. Any assumption and risk external to the Program that underlies the accomplishment of the Objectives and Project Activity Outcomes. However, such assumptions and risks will not excuse Parties' performance unless otherwise expressly agreed to in writing by all Parties.

6. Implementation of the M&E Plan.

(a) Approval and Implementation. The approval and implementation of the M&E Plan, as amended from time to time, will be in accordance with this M&E Annex, PIA, and any other relevant supplemental agreement.

ANNEX IV

CONDITIONS TO DISBURSEMENT OF COMPACT IMPLEMENTATION FUNDING

Capitalized terms used in this Annex IV and not defined in this Compact will have the respective meanings assigned thereto in the Program Implementation Agreement.

1. Conditions to each CIF Disbursement.

(a) Delivery by Namibia (or MCA-Namibia) to MCC of the following documents, in form and substance satisfactory to MCC:

(i) a complete, correct and fully executed Disbursement Request for the relevant Disbursement Period, together with the Periodic Reports covering such Disbursement Period.

(ii) any proposed waiver or deferral (together with a justification) of any condition to Disbursement.

(iii) a completed Detailed Financial Plan covering Compact Implementation Funding.

(b) Prior to the deposit of any Disbursement of Compact Implementation Funding (each a "**CIF Disbursement**") into any Permitted Account in accordance with an approved Disbursement Request, MCC will have received satisfactory evidence of the establishment of the Permitted Accounts.

(c) The monitoring and evaluation officer for MCA-Namibia has been selected and approved by MCC and remains engaged, or in the event a position is vacant, MCA-Namibia is actively recruiting for the position.

(d) The Fiscal Agent Agreement shall be executed and effective and the Fiscal Agent shall be mobilized.

(e) The Procurement Agent Agreement shall be executed and effective and the Procurement Agent shall be mobilized.

(f) The Bank Agreement shall be executed and effective and the Bank shall be mobilized.

(g) If applicable, the tax agreements described in Section 2.8(b) of this Compact shall be executed and effective, together with any laws, rules or regulations necessary to give effect thereto.

(h) MCC is satisfied, in its sole discretion, that (i) the activities being funded by such CIF Disbursement are necessary, advisable or otherwise consistent with the goal of facilitating the implementation of the Compact and will not violate any applicable law or regulation; (ii) no material default or breach of any covenant, obligation or responsibility by Namibia, MCA-Namibia or any Namibia entity has occurred and is continuing under this Compact or any supplemental agreement; (iii) there has been no violation of, and the use of requested funds for the purposes requested will not violate, the limitations on use or treatment of MCC Funding set

forth in this Compact, including under Section 2.7: (iv) any Taxes paid with MCC Funding through the date 90 days prior to the start of the applicable Disbursement Period have been reimbursed by Namibia in full in accordance with Section 2.8 of this Compact; and (v) Namibia has satisfied all of its payment obligations, including any insurance, indemnification, tax payments or other obligations, and contributed all resources required from it, under this Compact and any supplemental agreement.

(i) Namibia has provided MCC with evidence that the regulations exempting the Projects and contractors to be engaged to work on the Projects from the provisions of the Architects and Quantity Surveyors Act 13 of 1979 and Engineering Profession Act 18 of 1986 have been passed and are in full force and effect, in each case in accordance with their terms.

(j) For any CIF Disbursement occurring after this Compact has entered into force: MCC is satisfied, in its sole discretion, that (i) MCC has received the reports then due from any technical consultants (including environmental auditors engaged by MCA-Namibia for any Project Activity), and all such reports are in form and substance satisfactory to MCC; (ii) the Implementation Plan Documents submitted to MCC are current and updated and are in form and substance satisfactory to MCC, and there has been satisfactory progress on the components of the Implementation Plan for any relevant Projects or Project activities related to such CIF Disbursement; (iii) there has been satisfactory progress on the M&E Plan for the Program, relevant Project or Project Activity and substantial compliance with the requirements of such M&E Plan (including the targets set forth therein and any applicable reporting requirements set forth therein for the relevant Disbursement Period); (iv) there has been no material negative finding in any financial audit report delivered in accordance with this Compact and Audit Plan, for the prior two quarters (or such other period as the Audit Plan may require); (v) MCC does not have grounds for concluding that any matter certified to it in the related MCA Disbursement Certificate, Fiscal Agent Disbursement Certificate or Procurement Agent Certificate is not as certified; and (vi) if any of the officers or key staff of MCA-Namibia have been removed or resigned and the position remains vacant, MCA-Namibia is actively engaged in recruiting a replacement.

(k) MCC has not determined, in its sole discretion, that an act, omission, condition, or event has occurred that would be the basis for MCC to suspend or terminate, in whole or in part, MCC Funding in accordance with Section 5.1 of this Compact.

(l) Namibia has provided MCC with evidence, in form and substance satisfactory to MCC, that the program implementation unit that will serve as the management unit of MCA-Namibia has been established within NPC and has been exempted from the application of the Public Service Commission Act 13 of 1995.

ANNEX V

DEFINITIONS

***Additional Representative** has the meaning provided in Section 4.2.*

***Activity** has the meaning provided in Part A of Annex I.*

***Agriculture Project** has the meaning provided in Part D of Annex I.*

***Audit Guidelines** has the meaning provided in Section 3.8(a).*

***Baseline** has the meaning provided in paragraph 3(a) of Annex III.*

***CBLRM Activity** has the meaning provided in Part D of Annex I.*

***CEO** has the meaning provided in of Part E of Annex I.*

***CIF Disbursement** has the meaning provided in paragraph 1(b) of Annex IV.*

***CLBs** has the meaning provided in Part A of Annex I.*

***CITES** has the meaning provided in Part D of Annex I.*

***Communal Land Support Activity** has the meaning provided in Part D of Annex I.*

***Compact** has the meaning provided in the Preamble.*

***Compact Goal** has the meaning provided in Section 1.1.*

***Compact Implementation Funding** has the meaning provided in Section 2.2(a).*

***Compact Records** has the meaning provided in Section 3.7(a).*

***Compact Term** has the meaning provided in Section 7.4.*

***Conservancy Support Activity** has the meaning provided in Part C of Annex I.*

***COSDECs** has the meaning provided in Part A of Annex I.*

***Covered Provider** has the meaning provided in Section 3.7(c):*

***Disbursement** has the meaning provided in Section 2.4.*

***EA** has the meaning provided in Part A of Annex I.*

***Education Project** has the meaning provided in Part B of Annex I.*

***Education Quality Activity** has the meaning provided in Part B of Annex I.*

***EIA** has the meaning provided in Part A of Annex I.*

***EMP** has the meaning provided in Part A of Annex I.*

ENP has the meaning provided in Part C of Annex I.

ENP Activity has the meaning provided in Part C of Annex I.

Evaluation Component has the meaning provided in paragraph I of Annex III.

Excess CIF Amount has the meaning provided in Section 2.2(d).

Financial Plan Annex has the meaning provided in Annex II.

Fiscal Agent has the meaning provided in Part E of Annex I.

Goal Indicators has the meaning provided in paragraph 3(a) of Annex III.

GRN means the Government of the Republic of Namibia.

HAMU has the meaning provided in Part B of Annex I.

Implementation Letter has the meaning provided in Section 3.5.

Implementing Entity has the meaning provided Part E of Annex I.

Implementing Entity Agreement has the meaning provided in Part E of Annex I.

Indicators has the meaning provided in paragraph 3(a) of Annex III.

INP has the meaning provided in of Part A of Annex I.

INP Activity has the meaning provided in Part D of Annex I.

INP Innovation Fund has the meaning provided in Part D of Annex I.

Inspector General has the meaning provided in Section 3.8(a).

IPTT has the meaning provided in Part D of Annex I.

Land Access and Management Activity has the meaning provided in Part D of Annex I.

Livestock Market Efficiency Fund has the meaning provided in Part D of Annex I.

Livestock Support Activity has the meaning provided in Part D of Annex I.

M&E Annex has the meaning provided in Annex III.

M&E Plan has the meaning provided in Annex III.

Marketing Activity has the meaning provided in Part C of Annex I.

MCA Act has the meaning provided in Section 2.2(a).

MCA-Namibia has the meaning provided in Section 3.2(b).

MCA-Namibia Procurement Rules has the meaning provided in Section 3.6.

***MCC** has the meaning provided in the Preamble.*

***MCC Environmental Guidelines** has the meaning provided in Section 2.7(c).*

***MCC Funding** has the meaning provided in Section 2.3.*

***MCC Gender Policy** has the meaning provided of Part A of Annex I.*

***MCC Website** has the meaning provided in Section 2.7.*

***MoE** has the meaning provided in of Part B of Annex I.*

***MoF** has the meaning provided in of Part C of Annex I.*

***Monitoring Component** has the meaning provided in paragraph 1 of Annex III.*

***Multi-Year Financial Plan Summary** has the meaning provided in paragraph 1 of Annex II.*

***Namibia** has the meaning provided in the Preamble.*

***NCAs** has the meaning provided of Part A of Annex I.*

***NPC** has the meaning provided in Section 3.2(b).*

***NPC Act** has the meaning provided in Section 3.2(b).*

***NTA** has the meaning provided of Part B of Annex I.*

***NTF** has the meaning provided in Part B of Annex I.*

***OMB** has the meaning provided in Section 3.8(b).*

***OP 4.12** has the meaning provided Part A of Annex I.*

***Party and Parties** has the meaning provided in the Preamble.*

***Performance Targets** has the meaning provided in Part C of Annex I.*

***Permitted Account** has the meaning provided in Section 2.4.*

***PPOs** has the meaning provided Part D of Annex I.*

***Principal Representative** has the meaning provided in Section 4.2.*

***Procurement Agent** has the meaning provided in of Part E of Annex I.*

***Program** has the meaning provided in the Preamble.*

***Program Funding** has the meaning provided in Section 2.1.*

***Program Implementation Agreement** or **PIA** has the meaning provided in Section 3.1.*

***Program Objective** has the meaning provided in Section 1.2.*

Project Activity Indicators has the meaning provided in paragraph 3(a) of Annex III.

Project Objective(s) has the meaning provided in Section 1.3.

Project Objective Indicators has the meaning provided in paragraph 3(a) of Annex III.

Project(s) has the meaning provided in Section 6.2(b).

Provider has the meaning provided in Section 3.7(c).

RAP has the meaning provided in Part A of Annex I.

Resettlement means involuntary resettlement, specifically (a) the involuntary taking of land resulting in (i) relocation or loss of shelter; (ii) loss of assets or access to assets; or (iii) loss of income sources or means of livelihood, whether or not the affected persons must move to another location; or (b) the involuntary restriction of access to legally designated parks and protected areas resulting in adverse impacts on the livelihoods of the displaced persons.

RSRC Activity has the meaning provided in Part B of Annex I.

RSRCs has the meaning provided in Part B of Annex I.

SEA has the meaning provided Part A of Annex I.

SPAN has the meaning provided in Part C of Annex I.

Target has the meaning provided in paragraph 3(a) of Annex III.

Taxes has the meaning provided in Section 2.8(a).

Tertiary Education Finance Activity has the meaning provided in Part B of Annex I.

Textbook Activity has the meaning provided in Part B of Annex I.

Tourism Project has the meaning provided in Part C of Annex I.

US\$ means United States Dollars.

USG means the Government of the United States of America.

VET has the meaning provided in Part B of Annex I.

Vocational and Skills Training Activity has the meaning provided in Part B of Annex I.

ANNEX VI

MCA-NAMIBIA PROCUREMENT RULES

PART I. CONDUCT AND ADMINISTRATION OF PROCUREMENT

The principles, rules and procedures agreed herein ("*Procurement Rules*" or "*Rules*") shall govern the conduct and administration by MCA-Namibia of the procurement of the goods, works, consultant and non-consultant services that need to be acquired to implement the projects funded under the Compact ("*Project*" or "*Projects*").

Section 1. A. PROCUREMENT RULES: PROCUREMENT OF GOODS, WORKS AND NON-CONSULTANT SERVICES

I. INTRODUCTION

Purpose

1.1 The principles, rules and procedures set out in this Section 1.A of these Rules shall govern the conduct and administration of the procurement of the goods, works and non-consultant services¹ that need to be acquired to implement the Projects under the Compact.

General Considerations

1.2.1 MCA-Namibia is responsible for implementing the Projects, and therefore for selecting the contractors and suppliers, and awarding and subsequently administering the contracts. While in practice the specific procurement rules and procedures to be followed in the implementation of a Project depend on the circumstances of the particular case, the following four considerations (the "*Procurement Principles*") are agreed to generally guide the application of these Rules:²

- (a) Open, fair and competitive procedures used in a transparent manner to solicit, award and administer contracts to procure goods, works and non-consultant services;
- (b) Solicitations for goods, works and non-consultant services shall be based upon a clear and accurate description of the goods, works or non-consultant services to be acquired;
- (c) Contracts shall be awarded only to qualified and capable suppliers and contractors that have the capability and willingness to perform the contracts in accordance with the terms and conditions of the applicable contracts and on a cost-effective and timely basis; and
- (d) No more than a commercially reasonable price (as determined, for example, by a comparison of price quotations and market prices) shall be paid to procure goods, works and non-consultant services.

¹ References to "goods" and "works" in these Rules include related services such as transportation, insurance, installation, commissioning, training, and initial maintenance. "Goods" includes commodities, raw materials, machinery, equipment, and industrial plants. The provisions of these Rules also apply to services which are bid and contracted on the basis of performance of a measurable physical output, such as drilling, mapping, and similar operations. The Rules governing consultant services are set out below at Section 1.B.

² These four principles are set out in Section 3.6 of the Compact.

1.2.2 MCA-Namibia shall ensure that all the procurements for goods, works and non-consultant services in furtherance of the Compact and funded in whole or in part, directly or indirectly, with MCC funding shall comply with these Procurement Principles.

1.3 A competitive bidding process ("**Competitive Bidding**" or "**CB**") shall serve as the standard for all procurements for all MCC-funded goods, works, and non-consultant services conducted in accordance with these Rules as set out in Sub-Section 1.A.II below, except in those instances where MCC and MCA-Namibia agree to pursue other methods of procurement.

Sub-Section 1.A.III describes these other methods of procurement and the circumstances under which their application would be more appropriate. The particular methods to be followed for procurements under the Compact shall be set out in Procurement Plans approved by MCC.

1.4 Reserved

Applicability of Section 1.A of these Rules

1.5 The procedures outlined in this Section 1.A of these Rules apply to all contracts for goods, works and non-consultant services funded by MCC under the Compact.³

Eligibility

1.6 To foster competition MCC permits firms and individuals from almost all countries⁴ to offer goods, works, and non-consultant services for MCC-funded Projects. Any conditions for participation shall be limited to those that are essential to ensure the firm's capability to fulfill the contract in question.

1.7 In connection with any MCC-funded contract, MCA-Namibia shall not deny pre- or post-qualification to a firm for reasons unrelated to its capability and resources to perform the contract successfully; nor shall MCA-Namibia disqualify any bidder for such reasons. Consequently, MCA-Namibia should carry out due diligence on the legal, technical and financial qualifications of bidders to be assured of their capabilities in relation to the specific contract.

1.8 As exceptions to the foregoing:

(a) Firms of a country or goods manufactured in a country may be excluded if, (i) as a matter of law or official regulation, the Republic of Namibia prohibits commercial relations with that country, provided that MCC is satisfied that such exclusion does not preclude effective competition for the supply of goods or works required, or (ii) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Republic of Namibia prohibits any import of goods from, or payments to, a particular country, person, or entity. Where the Republic of Namibia prohibits payments to a particular firm or for particular goods by such an act of compliance, that firm may be excluded.

³ This includes those cases where MCA-Namibia employs an independent procurement agent, but excludes tenders awarded by MCC under its own procurement rules.

⁴ Firms and individuals from any country subject to sanction or restriction by law or policy of the United States are not eligible to compete for MCC-funded contracts. See Paragraph 1.8(e) of Section 1.A of these Rules.

(b) A firm which has been engaged to provide consultant services for the preparation or implementation of a Project, and any of its affiliates, shall be disqualified from subsequently providing goods, works, consultant or non-consultant services resulting from or directly related to the firm's consultant services for such preparation or implementation. This provision does not apply to the various firms (consultants, contractors, or suppliers) which together are performing the contractor's obligations under a turnkey or design and build contract.⁵

(c) Government-owned enterprises in the Republic of Namibia may participate if they are receiving no state subsidy and can demonstrate that they do not receive a cross-subsidy of income as a result of statutory powers.⁶

(d) A firm declared ineligible through MCC's Excluded Parties Verification procedures located at <http://www.mcc.gov/documents/mcc-ppg-eligibilityverification.pdf> shall be ineligible to be awarded an MCC-funded contract. This would also remove from eligibility any procurement from a country or from a firm that is organized in or has its principal place of business or a significant portion of its operations in any country that is subject to sanction or restriction by law or policy of the United States.⁷

Advance Contracting and Retroactive Financing

1.9 The process of identifying and selecting contractors for the provision of goods, works or non-consultant services to implement projects funded under the Compact before the Compact enters into force is referred to as advance contracting. Similarly, payments made under a contract that is signed prior to the Compact entering into force for which MCA-Namibia would seek reimbursement from MCC is known as retroactive financing. MCA-Namibia will not engage in any advance contracting or be entitled to any retroactive financing, without the prior approval of MCC.

Joint Ventures

1.10 Any firm may bid independently or in joint venture confirming joint and several liability, with domestic firms and/or with foreign firms, but MCC does not accept conditions of bidding which require mandatory joint ventures or other forms of mandatory association between firms.

MCC Review

1.11 MCC shall be entitled to review MCA-Namibia procurement procedures, documents, bid evaluations, award recommendations, and contracts to ensure that the procurement process is carried out in accordance with the agreed procedures. These review procedures are described in Attachment 1 of these Rules.

Misprocurement

1.12 MCC does not fund expenditures for goods, works and non-consultant services which have not been procured in accordance with the agreed provisions as detailed in the Compact. these

⁵ See Paragraph 2.5 of Section 1.A of these Rules.

⁶ Other than Force Account units, as permitted under Paragraph 3.8 of Section 1.A of these Rules.

⁷ As of July 2008, this list includes Cuba, Iran, North Korea, Sudan and Syria.

Rules and the approved Procurement Plans.⁸ In such cases, MCC will declare misprocurement, and may cancel that portion of the Compact allocated to the goods, works or non-consultant services that have been misprocured if corrective measures satisfactory to MCC are not taken. MCC may, in addition, exercise other remedies provided for under the Compact. Even once the contract is awarded after obtaining an approval from MCC, MCC may still declare misprocurement if it concludes that the approval was issued on the basis of incomplete, inaccurate, or misleading information furnished by MCA-Namibia or the terms and conditions of the contract had been modified without MCC approval.

References to MCC

1.13 MCA-Namibia shall use the following language when referring to MCC in procurement documents:

The United States of America, acting through the Millennium Challenge Corporation ("MCC") and the Republic of Namibia (the "Government") have entered into a Millennium Challenge Compact for Millennium Challenge Account assistance to help facilitate poverty reduction through economic growth in the Republic of Namibia (the "Compact") in the amount of [Insert amount of Compact] US\$ ("MCC Funding"). MCA-Namibia on behalf of the Government intends to apply a portion of the proceeds of MCC Funding to eligible payments under this contract. Payments by MCA-Namibia will be subject, in all respects, to the terms and conditions, including restrictions on the use of MCC Funding, of the Compact. No party other than the Government and MCA-Namibia shall derive any rights from the Compact or have any claim to the proceeds of MCC Funding.

Fraud and Corruption

1.14 MCC requires that all beneficiaries of MCC funding, including MCA-Namibia and any bidders, suppliers, contractors, and subcontractors under any MCC-funded contracts observe the highest standards of ethics during the procurement and execution of such contracts. In pursuance of this policy, the following provisions shall apply.

(a) For the purposes of these provisions, the terms set forth below are defined as follows:

(i) "corrupt practice" means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of a public official (including MCA-Namibia and MCC staff and employees of other organizations taking or reviewing selection decisions) in the selection process or in contract execution or the making of any payment to any third party, in connection with or in furtherance of a contract, in violation of (aa) the United States Foreign Corrupt Practices Act of 1977, as amended (15 USC 78a *et seq.*) ("FCPA"), or any other actions taken that otherwise would be in violation of the FCPA if the FCPA were applicable, or (bb) any applicable law in the Republic of Namibia;

(ii) "fraudulent practice" means any act or omission, including any misrepresentation, in order to influence (or attempt to influence) a selection process or the execution of a contract to obtain a financial or other benefit, or to avoid (or attempt to avoid) an obligation;

⁸ See Paragraphs 1.16.1, 1.16.2 and 1.16.3 of Section 1.A of these Rules.

(iii) "collusive practice" means a scheme or arrangement between two or more parties, with or without the knowledge of MCA-Namibia, designed to establish prices at artificial, noncompetitive levels or to otherwise deprive MCA-Namibia of the benefits of free and open competition;

(iv) "coercive practice" means impairing or harming or threatening to impair or harm, directly or indirectly, persons or their property, to influence their participation in a procurement process, or affect the execution of a contract;

(v) "obstructive practice" means:

(aa) destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to impede an investigation into allegations of a corrupt, fraudulent, coercive, collusive, or prohibited practice; and threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; and

(bb) acts intended to impede the exercise of the inspection and audit rights of MCC provided under the Compact; and

(vi) "prohibited practice" means any action that violates Section E (Compliance with Anti-Corruption Legislation), Section F (Compliance with Anti-Money Laundering Legislation) and Section G (Compliance with Terrorist Financing Statutes and Other Restrictions) of the "General Provisions Annex" that will be made a part of MCC-funded contracts and may be found on the MCC website at http://www.mcc.gov/guidance/compact/general_provisions.pdf.

(b) MCA-Namibia will reject a bid (and MCC will deny approval of a proposal for contract award) if it determines that the bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, obstructive or prohibited practices in competing for the contract in question.

(c) MCC and MCA-Namibia have the right to sanction a bidder, supplier, contractor, or subcontractor, including declaring such party ineligible, either indefinitely or for a stated period of time, to be awarded an MCC-funded contract if at any time either MCA-Namibia or MCC determines that the bidder, supplier, contractor, or subcontractor has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, obstructive or prohibited practices in competing for, or in executing, such a contract.

(d) MCC and MCA-Namibia have the right to require that a provision be included in solicitation documents and in MCC-funded contracts requiring a bidder, supplier, contractor, or subcontractor to permit MCA-Namibia, MCC, or any designee of MCC, to inspect its accounts, records and other documents relating to the submission of a bid or performance of a MCC-funded contract and to have them audited by auditors appointed by MCC or MCA-Namibia with the approval of MCC.

(e) MCC has the right to cancel the portion of MCC funding allocated to a contract if it determines at any time that representatives of a beneficiary of the MCC funding engaged in corrupt, fraudulent, collusive, coercive, obstructive or prohibited practices during the selection

process or the execution of a MCC-funded contract, without MCA-Namibia having taken timely and appropriate action satisfactory to MCC to remedy the situation.

1.15 To the extent required by Namibian law, MCA-Namibia shall introduce, into bid forms for large contracts funded by MCC, an undertaking of the bidder to observe, in competing for and executing a contract, the country's laws against fraud and corruption (including bribery), as listed in the solicitation documents. In the event such an undertaking is not required by Namibian law, MCA-Namibia may introduce the undertaking with the approval of MCC.

Procurement Plan

1.16.1 MCA-Namibia shall prepare periodic procurement plans, that are updated at least semi-annually, for acquiring goods, works and non-consultant services needed to implement the Compact (each a "**Procurement Plan**"). Each Procurement Plan shall be adopted by the governing body of MCA-Namibia and shall be submitted to MCC for its approval. Each Procurement Plan⁹, typically covering a six (6) month period, (a) lists the particular contracts for the goods, works, and/or non-consultant services required to implement the Compact for the period covered in such Procurement Plan; (b) identifies the proposed method of procurement for such contracts as determined according to these Rules; and (c) sets forth the estimated value for each contract.

1.16.2 MCA-Namibia shall ensure that all goods, works and non-consultant services shall be procured using the procurement method approved in each Procurement Plan. Compliance, satisfactory to MCC, with the approved Procurement Plan shall be a condition precedent to MCC Disbursements or payments.

1.16.3 MCA-Namibia shall not initiate any procurement action that is a substantial deviation¹⁰ from the applicable adopted and approved Procurement Plan without the prior approval of MCC. If MCA-Namibia determines that such a deviation is necessary or appropriate, MCA-Namibia shall submit a request to MCC for its approval of an amended Procurement Plan. If approved by MCC, MCA-Namibia shall comply with any instructions contained in the MCC approval, including any publication requirements. Any substantial deviation from a Procurement Plan as approved and adopted shall be submitted to the governing body of MCA-Namibia for adoption of the amended Procurement Plan.

⁹ When consultant services also need to be procured, the Procurement Plan must also include such procurements in accordance with the requirements at Section I.B Par. 1.24 of these Rules.

¹⁰ A "substantial deviation" is a change that adds a procurement action or actions that have a cumulative value of \$10,000 or more, changes the procurement method, significantly increases or decreases the budget, or increases the budget allocations above the threshold for the designated method of procurement or selection procedure.

II. COMPETITIVE BIDDING

A. General

Introduction

2.1 The objective of Competitive Bidding, as described in these Rules, is to provide all eligible prospective bidders¹¹ with timely and adequate notification of MCA-Namibia's requirements and an equal opportunity to bid for the required goods, works and non-consultant services.

Type and Size of Contracts

2.2 The solicitation documents shall clearly state the type of contract to be entered into and contain the proposed contract provisions appropriate for the type of contract to be used. Reimbursable cost contracts are acceptable to MCC only in exceptional circumstances such as conditions of high risk or where costs cannot be determined in advance with sufficient accuracy. Such contracts shall include appropriate incentives to limit costs and shall reference MCC Cost Principles ("**MCC Cost Principles**") found at the MCC website, www.mcc.gov. Requirements contracts, indefinite delivery- indefinite quantity ("**IDIQ**") contracts and blanket purchase agreements may also be used.

2.3 The size and scope of individual contracts will depend on the magnitude, nature, and location of the Project. For Projects requiring a variety of goods and works, separate contracts generally are awarded for the supply and/or installation of different items of equipment and plant¹² and for the works.

2.4 For a Project requiring similar but separate items of goods or works, bids may be invited under alternative contract options that would attract the interest of both small and large firms which could be allowed, at their option, to bid for individual contracts (slices) or for a group of similar contracts (package). All bids and combinations of bids shall be received by the same deadline and opened and evaluated simultaneously so as to determine the bid or combination of bids offering the lowest evaluated cost to MCA-Namibia.¹³

2.5 In certain cases a turnkey contract may be required under which the design and engineering, the supply and installation of equipment, and the construction of a complete facility or works are provided under one contract. Alternatively, MCA-Namibia may remain responsible for the design and engineering, and invite bids for a single responsibility contract for the supply and installation of all goods and works required for the Project component. Design and build, and management contracting contracts may also be appropriate.¹⁴

Two-Stage Bidding

2.6 In the case of turnkey contracts or contracts for large complex facilities or works of a special nature, or complex information and communication technology, it may be undesirable or

¹¹ See Paragraphs 1.6, 1.7 and 1.8 of Section 1.A of these Rules.

¹² For purposes of these Rules, "plant" refers to installed equipment, as in a production facility.

¹³ See Paragraphs 2.49 – 2.54 of Section 1.A of these Rules for the bid evaluation procedures.

¹⁴ Also see Paragraphs 3.14 and 3.15 of Section 1.A of these Rules for performance-based contracting.

impractical to prepare complete technical specifications in advance. In such a case, a Two-Stage Bidding procedure may be used, under which first un-priced technical proposals on the basis of a conceptual design or performance specifications are invited, subject to technical as well as commercial clarifications and adjustments, to be followed by amended bidding documents¹⁵ and the submission of final technical proposals and priced bids in the second stage.

Notification and Advertising

2.7 On at least a semi-annual basis, MCA-Namibia shall publicize the procurements planned for the upcoming period as identified in the adopted Procurement Plan, which was approved by MCC (each a "**General Procurement Notice**"). The General Procurement Notice shall be in a form acceptable to MCC and include information derived from the Procurement Plan and the name, telephone (or fax) number, and email and postal address of MCA-Namibia agent responsible for procurement and the address of the website(s) where Specific Procurement Notices will be posted. If known, the scheduled date for availability of solicitation documents for each procurement (including prequalification or bidding documents) should be indicated. Such solicitation documents shall not be released to the public earlier than the date of publication of the General and Specific Procurement Notices. The General Procurement Notice shall be advertised in a manner to provide reasonable notice of planned procurements to potential suppliers and contractors. Advertisement of the General Procurement Notice shall include posting in English at MCA-Namibia's website (or such other appropriate website designated by MCA-Namibia and approved by MCC), the Development Gateway Market website at www.dgmarket.com ("**dgMarket**") and the United Nations Development Business online website at www.devbusiness.com ("**UNDB Online**").¹⁶ MCA-Namibia shall also publish the General Procurement Notice in a newspaper of wide circulation in the Republic of Namibia and in such other media outlets as appropriate or as requested from time to time by MCC.

2.8 Invitations to prequalify or to bid, as the case may be, shall be advertised as Specific Procurement Notices (each, a "**Specific Procurement Notice**"). For contracts for Goods and Non-consulting services valued at or over US\$200,000 and contracts for Works valued at or over US\$1,000,000, such invitations shall be published in at least one newspaper of national circulation in the Republic of Namibia, posted on MCA-Namibia's website (or such other appropriate website designated by MCA-Namibia and approved by MCC) and at dgMarket website and UNDB Online. Publication in local print and broadcast and other national and international media is encouraged as long as the posting does not pre-date the required postings. For contracts for Works valued at or over US\$200,000 and under US\$1,000,000, such invitations shall be published in at least one newspaper of national circulation in the Republic of Namibia and posted on MCA-Namibia's website (or such other appropriate website designated by MCA-Namibia and approved by MCC). The text of the notice may be subject to prior approval by MCC. Notification shall be given in sufficient time to enable prospective bidders to obtain prequalification or bidding documents and prepare and submit their responses taking into

¹⁵ In revising the bidding documents in the second stage MCA-Namibia should respect the confidentiality of the bidders' technical proposals used in the first stage, consistent with requirements of transparency and intellectual property rights.

¹⁶ UNDB is a publication of the United Nations. Subscription information is available from: Development Business, United Nations, GCPO Box 5850, New York, NY 10163-5850, USA (Website: www.devbusiness.com; e-mail: dbsubscribe@un.org); Development Gateway Market is an electronic portal of Development Gateway Foundation, 1889 F Street, N.W. Washington, DC 20006, USA (Website: www.dgmarket.com).

consideration the estimated value of the contract and period of advance notice given with the General Procurement Notice.¹⁷

Prequalification of Bidders

2.9 Prequalification is usually necessary for large or complex works, or in any other circumstances in which the high costs of preparing detailed bids could discourage competition, such as custom designed equipment, industrial plants, specialized services, some complex information and technology and contracts to be let under turnkey, design and build, or management contracting. This also ensures that invitations to bid are extended only to those who have adequate capabilities and resources. Prequalification shall be based entirely upon the capability and resources of prospective bidders to perform the particular contract satisfactorily, taking into account their (a) experience and past performance on similar contracts, (b) capabilities with respect to personnel, equipment, and construction or manufacturing facilities, and (c) financial position.

2.10 The invitation to prequalify for bidding on specific contracts or groups of similar contracts shall be advertised as described in Paragraphs 2.7 and 2.8 above. The scope of the contract and a clear statement of the requirements for qualification shall be sent to those who responded to the invitation. All such applicants that meet the specified criteria shall be allowed to bid. MCA-Namibia shall inform all applicants of the results of prequalification. As soon as prequalification is completed, the bidding documents shall be made available to the qualified prospective bidders. For prequalification for groups of contracts to be awarded over a period of time, a limit for the number or total value of awards to any one bidder may be made on the basis of the bidder's resources. The list of prequalified firms in such instances shall be updated periodically. Verification of the information provided in the submission for prequalification shall be confirmed at the time of award of contract, and award may be denied to a bidder that is judged no longer to have the capability or resources to perform the contract successfully.

B. Bidding Documents

General

2.11 The bidding documents shall furnish all information necessary for a prospective bidder to prepare a bid for the goods, works and non-consultant services to be provided. While the detail and complexity of these documents may vary with the size and nature of the proposed bid package and contract, they generally include: invitation to bid; instructions to bidders; form of bid; form of contract; conditions of contract, both general and special; specifications and drawings; relevant technical data (including of geological and environmental nature); list of goods or bill of quantities; delivery time or schedule of completion; and necessary appendices, such as formats for various securities. The basis for bid evaluation and selection of the lowest evaluated bid shall be clearly outlined in the instructions to bidders and/or the specifications. If a fee is charged for the bidding documents, it shall be reasonable and reflect only the cost of their printing and delivery to prospective bidders, and shall not be so high as to discourage qualified bidders. MCA-Namibia may use an electronic system to distribute bidding documents, provided that MCC is satisfied with the adequacy of such system. If bidding documents are distributed electronically, the electronic system shall be secure to avoid modifications to the bidding

¹⁷ Also see Paragraph 2.44 of Section I.A of these Rules.

documents and shall not restrict the access of bidders to the bidding documents. Guidance on critical components of the bidding documents is given in the following paragraphs.

2.12 MCA-Namibia shall use the appropriate Standard Solicitation Documents, including the Standard Bidding Documents, as approved by MCC pursuant to Part 3 of these Rules, and as may be modified to address Project-specific conditions, subject to approval by MCC when the change is material. To the extent possible, such changes shall be introduced through bid or contract data sheets or through special conditions of contract, and not by introducing changes in the standard wording of MCA-Namibia's Standard Solicitation Documents.

Validity of Bids and Bid Security

2.13 Bidders shall be required to submit bids valid for a period specified in the bidding documents which shall be sufficient to enable MCA-Namibia to complete the comparison and evaluation of bids, review the recommendation of award with MCC (if required), and obtain all the necessary approvals so that the contract can be awarded within that period.

2.14 MCA-Namibia has the option of requiring a bid security. When used, the bid security shall be in the amount and form specified in the bidding documents¹⁸ and shall remain valid for a sufficient time beyond the validity period of the bids, in order to provide reasonable time for MCA-Namibia to act if the security is to be called. Bid security shall be released to unsuccessful bidders once the contract has been signed with the winning bidder. In place of a bid security, MCA-Namibia may require bidders to sign a declaration accepting that if they withdraw or modify their bids during the period of validity or they are awarded the contract and they fail to sign the contract or to submit a performance security before the deadline defined in the bidding documents, the bidder will be suspended for a period of time from being eligible for bidding in any contract with MCA-Namibia.

Language

2.15.1 All advertisements for contracts and notices of contract awards whether posted at MCA-Namibia's website, at dgMarket, or UNDB Online shall be posted in English.

2.15.2 For all contracts, the solicitation documents as well as the documents responding to these solicitations, including the proposals, shall be prepared in English. All contracts shall be written in English and this language shall govern contractual relations between MCA-Namibia and the contractor.

Clarity of Bidding Documents

2.16 Bidding documents shall be so worded as to permit international competition and shall set forth clearly and precisely the work to be carried out, the location of the work, the goods to be supplied, the place of delivery or installation, the schedule for delivery or completion, minimum performance requirements, and the warranty and maintenance requirements, as well as any other

¹⁸ The format of the bid security shall be in accordance with what was approved by MCC with its approval of MCA-Namibia's Standard Bidding Documents and shall be issued by a reputable bank or financial institution selected by the bidder. If the institution issuing the security is located outside the Republic of Namibia, it shall have a correspondent financial institution located in the Republic of Namibia to make it enforceable.

pertinent terms and conditions. In addition, the bidding documents, where appropriate, shall define the tests, standards, and methods that will be employed to judge the conformity of equipment as delivered, or works as performed, with the specifications. Drawings shall be consistent with the text of the specifications, and an order of precedence between the two shall be specified.

2.17 The bidding documents shall specify any factors, in addition to price, which will be taken into account in evaluating bids, and how such factors will be quantified or otherwise evaluated. If bids based on alternative designs, materials, completion schedules, etc., are permitted, conditions for their acceptability and the method of their evaluation shall be expressly stated.¹⁹

2.18 All prospective bidders shall be provided the same information, and shall be assured of equal opportunities to obtain additional information on a timely basis. MCA-Namibia shall provide reasonable access to Project sites for visits by prospective bidders. For works or complex supply contracts, particularly for those requiring refurbishing existing works or equipment, a pre-bid conference may be arranged whereby potential bidders may meet with representatives of MCA-Namibia to seek clarifications (in person or online). Minutes of the conference shall be provided to all prospective bidders with a copy included in the record of the procurement. Any additional information, clarification, correction of errors, or modifications of bidding documents shall be sent to each recipient of the original bidding documents in sufficient time before the deadline for receipt of bids to enable bidders to take appropriate actions. If necessary, the deadline shall be extended. MCC shall receive a copy of modifications to the bidding documents and be consulted for issuing its approval when the contract is subject to prior review by MCC.

Standards

2.19 Standards and technical specifications quoted in bidding documents shall promote the broadest possible competition, while assuring the critical performance or other requirements for the goods and/or works under procurement. As far as possible, MCA-Namibia shall specify internationally accepted standards such as those issued by the International Standards Organization with which the equipment or materials or workmanship shall comply. Where such international standards are unavailable or are inappropriate, national standards may be specified. In all cases, the bidding documents shall state that equipment, material, or workmanship meeting other standards, which promise at least substantial equivalence, will also be accepted.

Use of Brand Names

2.20 Specifications shall be based on relevant characteristics and/or performance requirements. References to brand names, catalog numbers, or similar classifications shall be avoided. If it is necessary to quote a brand name or catalog number of a particular manufacturer to clarify an otherwise incomplete specification, the words "or equivalent" shall be added after such reference. The specification shall permit the acceptance of offers for goods which have similar characteristics and which provide performance at least substantially equivalent to those specified.

¹⁹ See §2.52.

Pricing

2.21 Bids for goods shall be invited on the basis of (a) CIP²⁰ for all goods manufactured abroad, including those previously imported, and (b) EXW²¹ for goods manufactured or assembled in the Republic of Namibia, plus the cost of inland transportation and insurance to the place of destination, subject to any modifications set forth in the solicitation documents. Bidders shall be allowed to arrange for ocean and other transportation and related insurance from any eligible source.²² Where installation, commissioning, or other similar services are required to be performed by the bidder, as in the case of "supply and installation" contracts, the bidder shall be required to quote for these services, in addition.

2.22 In the case of turnkey contracts, the bidder shall be required to quote the price of the installed plant at site, including all costs for supply of equipment, marine and local transportation and insurance, installation, and commissioning, as well as associated works and all other services included in the scope of contract such as design, maintenance, operation, etc.

2.23 Bidders for works contracts shall be required to quote unit prices or lump sum prices for the performance of the works. Bidders shall be allowed to obtain all inputs from any eligible source so that they may offer their most competitive bids.

Price Adjustment

2.24 Bidding documents shall state either (a) that bid prices will be fixed or (b) that price adjustments will be made to reflect any changes (upwards or downwards) in major cost components of the contract, such as labor, equipment, materials, and fuel. Price adjustment provisions might be included in contracts which extend beyond eighteen months with the approval of MCC.

2.25 Prices may be adjusted by the use of a prescribed formula (or formulae) which breaks down the total price into components that are adjusted by price indices specified for each component or, alternatively, on the basis of documentary evidence (including actual invoices) provided by the supplier or contractor. The use of the formula method of price adjustment is preferable to that of documentary evidence. The method to be used, the formula (if applicable), and the base date for application shall be clearly defined in the bidding documents. If the payment currency is different from the source of the input and corresponding index, a correction factor shall be applied in the formula, to avoid incorrect adjustment.

Transportation and Insurance

2.26 Bidding documents shall permit suppliers and contractors to arrange transportation and insurance from any eligible source. Bidding documents shall state the types and terms of insurance to be provided by the bidder. The indemnity payable under transportation insurance shall be at least 110 percent of the contract amount denominated in United States dollars or local

²⁰ Refer to INCOTERMS 2000, published by the International Chamber of Commerce, Cours Albert 1er, 75008 Paris, France, for definition of CIP.

²¹ Refer to INCOTERMS 2000, published by the International Chamber of Commerce, Cours Albert 1er, 75008 Paris, France, for definition of EXW.

²² See Paragraphs 1.6, 1.7 and 1.8 of Section 1.A of these Rules.

currency of the Republic of Namibia depending upon the currency of the contract. For works, a contractor's "all risk" form of policy usually shall be specified. For large Projects with several contractors on a site, a "wrap up" or total Project insurance arrangement may be obtained by MCA-Namibia, in which case MCA-Namibia shall seek competition for such insurance.

2.27 Reserved

Currency Provisions

2.28 Bidding documents shall state the currency or currencies in which bidders are to state their prices. All bids are to be denominated and paid only in United States dollars, the local currency of the Republic of Namibia, or a combination of the two as stated in the bidding documents. No other currency is permitted.

Currency of Bid

2.29 The bidding documents shall caution bidders that the bid price must be expressed in the currency requested. The requested currency may be either United States dollars, the currency of the Republic of Namibia, or a combination of the two. Bids may not be requested or expressed in any other currency.

2.30 Reserved

Currency Conversion for Bid Comparison

2.31 The bid price is the sum of all payments in United States dollars or the currency of the Republic of Namibia as applicable. For the purpose of comparing prices, bid prices shall be converted to either one of the two currencies as selected by MCA-Namibia and stated in the bidding documents. MCA-Namibia shall make this conversion by using the forward or selling (exchange) rates, as appropriate, for those currencies quoted by an official, public source (such as the Bank of Namibia), by a commercial bank or by an internationally circulated newspaper for similar transactions on a date selected in advance. Such source and date to be specified in the bidding documents, provided that the date shall not be earlier than four weeks prior to the deadline for the receipt of bids, nor later than the original date for the expiration of the period of bid validity.

Currency of Payment

2.32 Payment of the contract price shall be made in the currency (or currencies) as stated in the bidding documents.

2.33 Reserved

Terms and Methods of Payment

2.34 Payment terms shall be in accordance with the international commercial practices applicable to the specific goods, works and non-consultant services. The contract shall provide for the payment of interest if payment is delayed due to the fault of MCA-Namibia or its agents beyond the time allowed in the contract; the rate of charges shall be specified in the contract.

(a) Contracts for supply of goods shall provide for full payment on the delivery and inspection, if so required, of the contracted goods except for contracts involving installation, commissioning and testing, in which case a portion of the payment may be made after the supplier has complied with all its obligations under the contract. In major contracts for goods and plants, provision shall be made for partial payments for work done and, in contracts of long duration, for partial payments during the period of manufacture or assembly.

(b) Contracts for works shall provide in appropriate cases for partial payments for work done in furtherance of contract performance and reasonable retention amounts to be released upon compliance with the contractor's obligations under contract.

2.35 Any payment for work done in furtherance of the contract shall be related to the estimated amount of these expenses and be specified in the bidding documents. Amounts and timing of other payments to be made, such as for materials delivered to the site for incorporation in the works, shall also be specified. Payment made in advance of work done, including payment made upon signature of a contract for goods or works (advance payments) requires prior approval of MCC and a commitment of a security guarantee or bond in the amount of the advance payment. The bidding documents shall specify the arrangements for any security required for advance payments.

2.36 Bidding documents shall specify the payment method. Terms of payment may not be used as an evaluation criterion and may not affect the bid evaluation.

Alternative Bids

2.37 The bidding documents shall clearly indicate when bidders are allowed to submit alternative bids, how alternative bids should be submitted, how bid prices should be offered and the basis on which alternative bids shall be evaluated.

Conditions of Contract

2.38 The contract documents shall clearly define the scope of work to be performed, the goods to be supplied, the rights and obligations of MCA-Namibia and of the supplier or contractor, and the functions and authority of the engineer, architect, or construction manager, if one is employed by MCA-Namibia, in the supervision and administration of the contract. In addition to the general conditions of contract, any special conditions particular to the specific goods, works or non-consultant services to be procured and the location of the Project shall be included.

Performance Security

2.39 Bidding documents for works shall require a security in an amount sufficient to protect MCA-Namibia in case of breach of contract by the contractor. This security shall be provided in an appropriate form and amount, as specified by MCA-Namibia in the bidding document.²³ The

²³The format of the performance security shall be in accordance with the Standard Bidding Documents and shall be issued by a reputable bank or financial institution selected by the bidder. If the institution issuing the security is located outside the Republic of Namibia, it shall have a correspondent financial institution located in the Republic of Namibia to make it enforceable.

amount of the security may vary, depending on the type of security furnished and on the nature and magnitude of the works. A portion of this security shall extend sufficiently beyond the date of completion of the works to cover the defects liability or maintenance period up to final acceptance by MCA-Namibia.

2.40 In contracts for the supply of goods, the need for performance security depends on the market conditions and commercial practice for the particular kind of goods. Suppliers or manufacturers may be required to provide a security to protect against nonperformance of the contract and to cover warranty obligations. The security shall be reasonable in amount.

Liquidated Damages and Bonus Clauses

2.41 Provisions for liquidated damages or similar provisions in an appropriate amount shall be included in the conditions of contract when delays in the delivery of goods, completion of works or failure of the goods, works or non-consultant services to meet performance requirements would result in extra cost or loss of revenue or loss of other benefits to MCA-Namibia. With prior approval of MCC, provision may also be made for a bonus to be paid to suppliers or contractors for completion of works or delivery of goods ahead of the times specified in the contract when such earlier completion or delivery would be of benefit to MCA-Namibia.

Force Majeure

2.42 The conditions of contract shall stipulate that failure on the part of the parties to perform their obligations under the contract will not be considered a default if such failure is the result of an event of force majeure as defined in the conditions of contract.

Applicable Law and Settlement of Disputes

2.43 The conditions of contract shall include provisions dealing with the applicable law and the forum for the settlement of disputes. Settlement of disputes shall take place in the Republic of Namibia with the possibility for international arbitration in the cases where the parties so agree. In the case of works contracts, supply and installation contracts, and turnkey contracts, the dispute settlement provision might also include mechanisms such as dispute review boards or adjudicators, which are designed to permit a speedier dispute settlement.

C. Bid Opening, Evaluation, and Award of Contract

Time for Preparation of Bids

2.44 The time allowed for the preparation and submission of bids shall be determined with due consideration of the particular circumstances of the Project, the magnitude and complexity of the contract, and the period of advanced notice provided by the General Procurement Notice. Where large works or complex items of equipment are involved, the period shall be long enough to enable prospective bidders to conduct investigations before submitting their bids. In such cases, MCA-Namibia may convene pre-bid conferences and arrange site visits. Bidders shall be permitted to submit bids by mail or by hand. MCA-Namibia may also use electronic systems permitting bidders to submit bids by electronic means, provided MCC is satisfied with the adequacy of the system, including, *inter alia*, that the system is secure, maintains the confidentiality and authenticity of bids submitted, uses an electronic signature system or

equivalent to keep bidders bound to their bids, and only allows bids to be opened with due simultaneous electronic authorization of the bidder and MCA-Namibia. In this case, bidders shall continue to have the option to submit their bids in hard copy. The deadline and place for receipt of bids shall be specified in the invitation to bid.

Bid Opening Procedures

2.45 The time for the bid opening shall be the same as for the deadline for receipt of bids or promptly²⁴ thereafter, and shall be announced, together with the place for bid opening, in the invitation to bid. MCA-Namibia shall open all bids at the stipulated time and place. Bids shall be opened in public; bidders or their representatives shall be allowed to be present (in person or online, when electronic bidding is used) and the general public, at the discretion of MCA-Namibia. The name of the bidder and total amount of each bid, and of any alternative bids if they have been requested or permitted, shall be read aloud (and posted online when electronic bidding is used) and recorded when opened and a copy of this record shall be sent to all bidders who submitted bids in time. Bids received after the time stipulated, as well as those not opened and read aloud at bid opening, shall not be considered.

Clarifications or Alterations of Bids

2.46 Except as otherwise provided in Paragraphs 2.63 and 2.64 of Section 1.A of these Rules, bidders shall not be requested or permitted to alter their bids after the deadline for receipt of bids. MCA-Namibia shall ask bidders for clarification needed to evaluate their bids but shall not ask or permit bidders to change the substance or price of their bids after the bid opening. Requests for clarification and the bidders' responses shall be made in writing, in hard copy and/or by an electronic system satisfactory to MCC.²⁵

Confidentiality

2.47 After the public opening of bids, information relating to the examination, clarification, and evaluation of bids and recommendations concerning awards shall not be disclosed to bidders or other persons not officially concerned with this process until the publication of contract award.

Examination of Bids

2.48 MCA-Namibia shall ascertain whether the bids (a) meet the eligibility requirements specified in Paragraphs 1.6, 1.7 and 1.8 of Section 1.A of these Rules, (b) have been properly signed, (c) are accompanied by the required securities or required declaration signed as specified in Paragraph 2.14 of Section 1.A of these Rules, (d) are substantially responsive to the bidding documents, and (e) are otherwise generally in order. If a bid is not substantially responsive, that is, it contains material deviations from or reservations to the terms, conditions, and specifications in the bidding documents, it shall not be considered further. The bidder shall not be permitted to correct or withdraw material deviations or reservations once bids have been opened.²⁶

²⁴To allow sufficient time to take the bids to the place announced for public bid opening.

²⁵ See Paragraph 2.44 of Section 1.A of these Rules.

²⁶ See Paragraph 2.50 of Section 1.A of these Rules regarding corrections.

Evaluation and Comparison of Bids

2.49 The purpose of bid evaluation is to determine the cost and benefits of each bid in a manner that permits a comparison to be made. Subject to Paragraph 2.58 of Section 1.A of these Rules, the bid best meeting the evaluation criteria and other non-price factors (including, but not limited to, warranties and delivery periods),²⁷ but not necessarily the lowest submitted price, shall be selected for award.

2.50 The bid price read aloud at the bid opening shall be adjusted to correct any arithmetical errors. Also, for the purpose of evaluation, adjustments shall be made for any quantifiable nonmaterial deviations or reservations.

2.51 The evaluation and comparison of bids shall be on CIP prices for the supply of imported goods²⁸ and EXW prices, plus cost of inland transportation and insurance to the place of destination, for goods manufactured within the Republic of Namibia, together with prices for any required installation, training, commissioning, and other similar services.²⁹

2.52 Bidding documents shall also specify the relevant factors in addition to price to be considered in bid evaluation and the manner in which they will be applied for the purpose of determining the lowest evaluated bid. For goods and equipment, other factors may be taken into consideration including, among others, delivery time, operating costs, efficiency and compatibility of the equipment, availability of service and spare parts, and related training, safety, and environmental benefits. The factors other than price to be used for determining the lowest evaluated bid shall, to the extent practicable, be expressed in monetary terms, or given a relative weight in the evaluation provisions in the bidding documents.

2.53 Bid evaluation for works shall be strictly in monetary terms. Any procedure under which bids above or below a predetermined assessment of bid values are automatically disqualified is not acceptable. If time is a critical factor, the value of early completion to MCA-Namibia may be taken into account according to criteria presented in the bidding documents, only if the conditions of contract provide for commensurate penalties for noncompliance and MCC has granted prior approval.

2.54 MCA-Namibia shall prepare a detailed report on the evaluation and comparison of bids setting forth the specific reasons on which the recommendation is based for the award of the contract.

Domestic Preferences

2.55 Application of domestic preferences for nationality or local content shall not be permitted.

2.56 Reserved

²⁷ See Paragraph 2.52 of Section 1.A of these Rules.

²⁸ MCA-Namibia may ask for prices on a CIF basis (and bids compared on that same basis) only when the goods are carried by sea and the goods are not containerized. CIF shall not be used for anything other than sea transport. CIP can be used for any mode of transport, including sea and multimodal transport.

²⁹ The evaluation of bids shall not take into account: (a) customs duties and other taxes levied on imported goods quoted CIP (which are excluded of custom duties); (b) sales and similar taxes levied in connection with the sale or delivery of the goods.

Extension of Validity of Bids

2.57 MCA-Namibia shall use best efforts to complete evaluation of bids and award of contract within the initial period of bid validity so that extensions are not necessary. An extension of bid validity, if justified by exceptional circumstances, shall be requested in writing from all bidders before the expiration date. The extension shall be for the minimum period required to complete the evaluation, obtain the necessary approvals, and award the contract. Whenever an extension of bid validity period is requested, bidders shall not be requested or be permitted to change the quoted (base) price or other conditions of their bid. Bidders shall have the right to refuse to grant such an extension. If the bidding documents require a bid security, bidders may exercise their right to refuse to grant such an extension without forfeiting their bid security, but those who are willing to extend the validity of their bid shall be required to provide a suitable extension of bid security.

Postqualification of Bidders

2.58 If bidders have not been prequalified, MCA-Namibia shall determine whether the bidder whose bid has been determined to best meet the evaluation criteria, subject to Section 2.49, has the capability and resources to effectively carry out the contract as offered in the bid. The criteria to be met shall be set out in the bidding documents, and if the bidder does not meet them, the bid shall be rejected. In such an event, MCA-Namibia shall make a similar determination and also confirm eligibility of the next-lowest evaluated bidder.

Award of Contract

2.59 MCA-Namibia shall award the contract, within the period of the validity of bids, to the bidder who meets the appropriate standards of capability and resources and whose bid has been determined (a) to be substantially responsive to the bidding documents and (b) to best meet the evaluation criteria, subject to Section 2.49.³⁰ A bidder shall not be required, as a condition of award, to undertake responsibilities for work not stipulated in the bidding documents or otherwise to modify the bid as originally submitted.

Publication of the Award of Contract

2.60 After the award of contract, MCA-Namibia shall post at UNDB Online, at dgMarket and at MCA-Namibia's website (or such other appropriate website designated by MCA-Namibia and approved by MCC) the results, identifying the procurement, the name of the winning bidder and the price, duration, and summary scope of the contract. The same information shall be sent to all bidders who have submitted bids. The posting at UNDB Online and at dgMarket shall be done monthly and at MCA-Namibia's website (or such other appropriate website designated by MCA-Namibia and approved by MCC) at least weekly. The posting shall be in a format of a summarized table covering the previous period. All such postings shall be in English.

³⁰ Referred to as "lowest evaluated bidder" and "lowest evaluated bid," respectively.

Rejection of All Bids

2.61 Bidding documents usually provide that MCA-Namibia may reject all bids. Rejection of all bids is justified when there is lack of effective competition, or bids are not substantially responsive or when bid prices are unreasonable or are substantially higher than existing budget. Lack of competition shall not be determined solely on the basis of the number of bidders. Even when only one bid is submitted, the bidding process may be considered valid if the bid was satisfactorily advertised and prices are reasonable in comparison to market values. MCA-Namibia may, after approval by MCC, reject all bids. If all bids are rejected, MCA-Namibia shall review the causes justifying the rejection and consider making revisions to the conditions of contract, design and specifications, scope of the contract, or a combination of these, before inviting new bids.

2.62 If the rejection of all bids is due to lack of competition, wider advertising shall be considered. If the rejection is due to most or all of the bids being non responsive, new bids may be invited from the initially prequalified firms, or with approval of MCC from only those that submitted bids in the first instance.

2.63 All bids shall not be rejected and new bids invited on the same bidding and contract documents solely for the purpose of obtaining lower prices. If the lowest evaluated responsive bid exceeds MCA-Namibia pre-bid cost estimates by a substantial margin, MCA-Namibia shall investigate causes for the excessive cost and consider requesting new bids as described in the previous paragraphs. Alternatively, MCA-Namibia may negotiate with the lowest evaluated bidder to try to obtain a satisfactory contract through a reduction in the scope and/or a reallocation of risk and responsibility which can be reflected in a reduction of the contract price. However, substantial reduction in the scope or modification to the contract documents generally will require rebidding.

2.64 The prior approval of MCC shall be obtained before rejecting all bids, soliciting new bids, or entering into negotiations with the lowest evaluated bidder. Within two weeks of the rejection of all bids, MCA-Namibia shall post at dgMarket and MCA-Namibia's website (or such other appropriate website designated by MCA-Namibia and approved by MCC) notification of the cancellation of the procurement. The notification shall identify the procurement and state briefly the reason for cancelling the procurement. The same information shall be sent to all bidders who have submitted bids. All such postings shall be in English.

Debriefing

2.65 The bidding documents shall specify that any bidder who wishes to ascertain the grounds on which its bid was not selected, may request an explanation from MCA-Namibia. MCA-Namibia shall promptly provide an explanation of why such bid was not selected, either in writing and/or in a debriefing meeting, at the option of MCA-Namibia. The requesting bidder shall bear all the costs of attending such a debriefing.

D. Modified CB

2.66 Reserved

2.67 Reserved

Procurement of Commodities

2.68 Market prices of commodities, such as grain, animal feed, cooking oil, fuel, fertilizer, and metals, fluctuate depending upon the demand and supply at any particular time. Many are quoted in established commodity markets. Procurement often involves multiple awards for partial quantities to assure security of supply and multiple purchases over a period of time to take advantage of favorable market conditions and to keep inventories low. A list of prequalified bidders may be drawn up to whom periodic invitations are issued. Bidders may be invited to quote prices linked to the market price at the time of or prior to the shipments. Bid validities shall be as short as possible. Bid prices must be denominated and paid in either United States dollars or the local currency of the Republic of Namibia. The currency shall be specified in the bidding document. Bidding documents may permit telexed or faxed bids or bids submitted by electronic means, and in such cases either no bid security is required, or standing bid securities valid over a specified period of time have been submitted by prequalified bidders. Standard contract conditions and forms consistent with market practices shall be used.

III. OTHER METHODS OF PROCUREMENT

General

3.1 This Section describes the methods of procurement that can be used where CB would not be the most economic and efficient method of procurement, and where other methods are deemed more appropriate.³¹ Paragraphs 3.2 to 3.7 of Section 1.A of these Rules describe the generally used methods in descending order of preference and the remaining paragraphs describe the methods used in specific circumstances.

Limited Bidding ("LB")

3.2 Limited Bidding is essentially CB by direct invitation without open advertisement. It may be an appropriate method of procurement where (a) there are only a limited number of suppliers, or (b) other exceptional reasons may justify departure from full CB procedures. Under LB, MCA-Namibia shall seek bids from a list of potential suppliers or contractors broad enough to assure competitive prices, such list to include all suppliers or contractors when there are only a limited number. In all respects other than advertisement, CB procedures shall apply, including the publication of the contract award as indicated in Paragraph 2.60 of Section 1.A of these Rules.

3.3 Reserved

3.4 Reserved

Shopping

3.5 Shopping is a procurement method based on comparing price quotations obtained from several suppliers (in the case of goods) or from several contractors (in the case of civil works), with a minimum of three, to assure competitive prices, and is an appropriate method for

³¹ Contracts shall not be divided into smaller units in order to make them less attractive for CB procedures; any proposal to divide a contract into smaller packages shall require the prior approval of MCC.

procuring readily available off the shelf goods or standard specification commodities of small value, or simple civil works of small value. (Small value is defined as procurements valued at less than US\$200,000 in the aggregate from one contractor). Requests for quotations shall indicate the description and quantity of the goods or specifications of works or non-consultant services, as well as desired delivery (or completion) time and place. Quotations may be submitted by letter, facsimile or by electronic means. The evaluation of quotations shall follow the same principles as of Competitive Bidding. The terms of the accepted offer shall be incorporated in a purchase order or brief contract.

Direct Contracting

3.6 Direct contracting is contracting without competition (single-source) and may be an appropriate method under the following circumstances:

- (a) An existing contract for goods, works or non-consultant services, awarded in accordance with procedures acceptable to MCC, may be extended, within reasonable limits, for additional goods, works or non-consultant services of a similar nature. MCC shall be satisfied in such cases that no advantage could be obtained by further competition and that the prices on the extended contract are reasonable. Provisions for such an extension, if considered likely in advance, shall be included in the original contract.
- (b) Standardization of equipment or spare parts, to be compatible with existing equipment, may justify additional purchases from the original supplier. For such purchases to be justified, the original equipment shall be suitable, the number of new items shall generally be less than the existing number, the price shall be reasonable, and the advantages of another make or source of equipment shall have been considered and rejected on grounds acceptable to MCC.
- (c) The required equipment is proprietary and obtainable only from one source.
- (d) The contractor responsible for a process design requires the purchase of critical items from a particular supplier as a condition of a performance guarantee.
- (e) In exceptional cases, such as in response to natural disasters.
- (f) The value of the contract is under US\$2,000.

3.7 For all procurements valued above US\$2,000, MCA-Namibia, after the contract signature, shall post at MCA-Namibia's website or such appropriate website designated by MCA-Namibia and approved by MCC, at dgMarket and at UNDB Online the name of the contractor, price, duration, and summary scope of the direct contract. This publication may be done quarterly and in the format of a summarized table covering the previous period.

Force Account

3.8 Force Account, that is, construction by the use of the government's own personnel and equipment,³² may be the only practical method for constructing some kinds of works. The use of Force Account may be justified where:

- (a) quantities of work involved cannot be defined in advance;
- (b) works are small and scattered or in remote locations for which qualified construction firms are unlikely to bid at reasonable prices;
- (c) work is required to be carried out without disrupting ongoing operations;
- (d) risks of unavoidable work interruption are better borne by MCA Entity than by a contractor; and
- (e) there are emergencies needing prompt attention.

3.9 Reserved

Procurement Agents and Fiscal Agents

3.10 MCA-Namibia may wish (or be required by MCC) to employ, as their agents, firms specializing in handling procurement and/or financial management services. Such agents shall be selected following these Rules (or such other procedures as MCC may approve) and the procedures set out in the RFP requesting such agent services. The procurement agent shall follow all the procurement procedures provided for in the Compact, any agreement supplemental to the Compact (each a "*Supplemental Agreement*"), and these Rules, conduct procurement in conformance with a Procurement Plan approved by MCC, use appropriately the Standard Solicitation Documents as approved by MCC, follow review procedures, and properly document the procurement activity. Management contractors may be employed in a similar manner for a fee to contract for miscellaneous works involving reconstruction, repairs, rehabilitation, and new construction in emergency situations, or where large numbers of small contracts are involved.

Inspection Agents

3.11 Preshipment inspection and certification of imports is one of the safeguards MCA-Namibia may choose to adopt, particularly for any large import program. The inspection and certification usually covers quality, quantity, and reasonableness of price. Imports procured through CB procedures shall not be subject to price verification, but only verification for quality and quantity. However, imports not procured through CB may additionally be subjected to price verification. The inspection agents ordinarily are paid for on a fee basis levied on the value of the goods.

3.12 Reserved

³² A government-owned construction unit that is not managerially and financially autonomous shall be considered a force account unit. "Force account" is otherwise known as "direct labor," "departmental forces," or "direct work."

Procurement under BOO/BOT/BOOT, Concessions and Similar Private Sector Arrangements

3.13 Where MCC is participating in funding the cost of a Project procured under a BOO/BOT/BOOT,³³ concessions or similar types of private sector arrangements, either of the following procurement procedures shall be used, as provided for in the Compact including the Supplemental Agreements and further elaborated in the Procurement Plan approved by MCC:

(a) The concessionaire or entrepreneur under the BOO/BOT/BOOT or similar type of contract³⁴ shall be selected under CB procedures acceptable to MCC, which may include several stages in order to arrive at the optimal combination of evaluation criteria, such as the cost and magnitude of the financing offered, the performance specifications of the facilities offered, the cost charged to the user or purchaser, other income generated for MCA-Namibia or purchaser by the facility, and the period of the facility's depreciation; or

(b) If the said concessionaire or entrepreneur has not been selected in the manner set forth in Subparagraph (a) above, the goods, works, consultant or non-consultant services required for the facility and to be funded by MCC shall be procured in accordance with CB procedures defined in Sub-Section I.A. II.

Performance Based Procurement ("Performance Based Procurement" or "Output Based Procurement")

3.14 Performance Based Procurement,³⁵ also called Output Based Procurement, refers to competitive procurement processes resulting in a contractual relationship where payments are made for measured outputs instead of the traditional way where inputs are measured. The technical specifications define the desired result and which outputs will be measured including how they will be measured. Those outputs aim at satisfying a functional need both in terms of quality, quantity and reliability. Payment is made in accordance with the quantity of outputs delivered, subject to their delivery at the level of quality required. Reductions from payments (or retentions) may be made for lower-quality levels of outputs and, in certain cases, premiums may be paid for higher quality levels of outputs. The bidding documents do not normally prescribe the inputs, nor a work method for the contractor. The contractor is free to propose the most appropriate solution, based on mature and well proven experience and shall demonstrate that the level of quality specified in the bidding documents will be achieved.

3.15 Performance Based Procurement can involve: (a) the provision of services to be paid on the basis of outputs; (b) design, supply, construction (or rehabilitation) and commissioning of a facility to be operated by MCA-Namibia; or (c) design, supply, construction (or rehabilitation) of a facility and provision of services for its operation and maintenance for a defined period of years after its commissioning.³⁶ For the cases where design, supply and/or construction are

³³ BOO: Build, Own, Operate; BOT: Build, Operate, Transfer; BOOT: Build, Own, Operate, Transfer

³⁴ For projects such as toll roads, tunnels, harbors, bridges, power stations, waste disposal plants, and water distribution systems.

³⁵ The use of Performance Based Procurement in MCC funded projects should be the result of the satisfactory technical analysis of the different options available and should be subject to prior approval by MCC for incorporation into the Procurement Plan.

³⁶ Examples of such type of procurement are: (i) for the case of procurement of services: provision of medical services, i.e. payments for specific services, like office visits, or defined laboratory tests, etc. ; (ii) for the case of

required, prequalification is normally required and the use of Two-Stage Bidding as indicated in Paragraph 2.6 of Section 1.A of these Rules will usually apply.

3.16 Reserved

3.17 Reserved

APPENDIX 1: REVIEW BY MCC OF PROCUREMENT DECISIONS

Procurement Plans

1. MCC shall review procurement arrangements proposed by MCA-Namibia in the Procurement Plan for its conformity with the Compact and these Rules. MCA-Namibia shall update the Procurement Plan at least on a semi-annual basis. Any amendments proposed to the Procurement Plan shall be submitted to MCC for prior approval.

Prior Review

2. The thresholds for review of procurement decisions prior to award of a contract and any modification to such contracts are set out in Attachment 1 of these Rules.

Post Review

3. MCA-Namibia shall retain all documentation with respect to each contract during implementation of the Compact and up to five years after the expiration or termination of the Compact. This documentation is subject to examination by MCC, its oversight agencies and by its consultants and should include, but is not to be limited to, the signed original of the contract, the analysis of the respective proposals, recommendations for award, the record of MCC approvals, and the record of any bid challenge. MCA-Namibia shall also furnish such documentation to MCC upon request. If MCC determines that the goods, works or non-consultant services were not procured in accordance with the agreed procedures, as reflected in the Compact including the Supplemental Agreements and further detailed in the Procurement Plan approved by MCC, or that the contract itself is not consistent with such procedures, it may declare misprocurement as established in Paragraph 1.12 of Section 1.A of these Rules. MCC shall promptly inform MCA-Namibia of the reasons for such determination.

APPENDIX 2:

Reserved

APPENDIX 3: GUIDANCE TO BIDDERS

Bidders may learn about the Millennium Challenge Corporation and its programs at www.mcc.gov and about the MCC program in the Republic of Namibia at the website

procurement of a facility: Design, Procurement, Construction, and Commissioning of a thermal power plant to be operated by a grantee; (iii) for the case of procurement of a facility and services: Design, Procurement, Construction (or Rehabilitation) of a road and operation and maintenance of the road for 5 years after construction.

established by MCA-Namibia or such other appropriate website designed by MCA-Namibia and approved by MCC.

Section 1.B. PROGRAM PROCUREMENT RULES: PROCUREMENT OF CONSULTANTS AND CONSULTANT SERVICES

I. INTRODUCTION

Purpose

1.1 The principles, rules and procedures set out in this Section 1.B of these Rules shall govern the conduct and administration of the procurement of the consultants and consultant services that need to be acquired to implement the Projects under the Compact.

1.2 Reserved

1.3 For the purpose of these Rules, the term *consultants* includes a wide variety of entities, including consulting firms, engineering firms, construction managers, management firms, procurement agents, inspection agents, auditors, multinational organizations, investment and merchant banks, universities, research institutions, nongovernmental organizations, and individuals.³⁷

General Considerations

1.4.1 MCA-Namibia is responsible for implementing the Projects, and therefore for selecting the consultants, and awarding and subsequently administering the contracts. While in practice the specific procurement rules and procedures to be followed in the implementation of a Project depend on the circumstances of the particular case, the following Procurement Principles shall generally guide the application of these Rules:

(a) Open, fair and competitive procedures used in a transparent manner to solicit, award and administer contracts to procure consultant services;

(b) Solicitations for consultant services shall be based upon a clear and accurate description of the consultant services to be acquired;

(c) Contracts shall be awarded only to qualified and capable consultants that have the capability and willingness to perform the contracts in accordance with the terms and conditions of the applicable contracts and on a cost-effective and timely basis; and

(d) No more than a commercially reasonable price (as determined, for example, by a comparison of price quotations and market prices) shall be paid to procure the consultant services.³⁸

1.4.2 MCA-Namibia shall ensure that all the procurements for consultant services in furtherance of the Compact and funded in whole or in part, directly or indirectly, by MCC funding shall comply with these Procurement Principles.

³⁷ See Paragraphs 3.15-3.20 of Section 1.B of these Rules for particular types of consultants. Individual consultants are covered in Sub-Section 1.B.V.

³⁸ These four principles are set out in Section 3.6 of the Compact.

1.5 MCC considers that, in the majority of cases, these considerations can best be addressed through competition among qualified firms in which the selection is based on the quality of the proposal and the cost of the services to be provided. Sub-Sections 1.B.II and III of these Rules describe the different methods of selection of consultants and the circumstances in which they are appropriate. Since Quality and Cost Based Selection ("**QCBS**") is the most commonly recommended method, Sub-Section 1.B.II of these Rules describes in detail the procedures for QCBS. However, QCBS is not the most appropriate method of selection for all cases; therefore, Sub-Section 1.B.III describes other methods of selection and the circumstances in which they are more appropriate.

1.6 The particular methods to be followed for the selection of consultants under the Compact shall be set out in the Procurement Plans.

Applicability of Rules

1.7 The consultant services to which Section 1.B of these Rules apply are of an intellectual and advisory nature. This Section of these Rules does not apply to other types of services in which the physical aspects of the activity predominate (for example, operation and maintenance of facilities or plants, surveys, exploratory drilling, aerial photography, satellite imagery, and services contracted on the basis of performance of measurable physical output).³⁹

1.8 Reserved

Conflict of Interest

1.9 Consultants shall provide professional, objective, and impartial advice and at all times hold the interests of MCA-Namibia paramount, without any consideration for future work, and, in providing advice, consultants shall avoid conflicts with other assignments and their own corporate interests. Consultants shall not be hired for any assignment that would be in conflict with their prior or current obligations to other clients, or that may place them in a position of being unable to carry out the assignment in the best interest of MCA-Namibia. Without limitation on the generality of the forgoing, consultants shall not be hired under the circumstances set forth below:

(a) Conflict between consultant activities and procurement of goods, works or non-consultant services: A firm that has been engaged by MCA-Namibia to provide goods, works, or non-consultant services for a Project, and each of its affiliates, shall be disqualified from providing consultant services related to those goods, works or non-consultant services. Conversely, a firm hired to provide consultant services for the preparation or implementation of a Project, and each of its affiliates, shall be disqualified from subsequently providing goods, works or non-consultant services resulting from or directly related to the firm's consultant services for such preparation or implementation.

(b) Conflict among consultant assignments: Neither consultants (including their personnel and sub-consultants) nor any of their affiliates shall be hired for any assignment that, by its nature, may be in conflict with another assignment of the consultants.

³⁹ As to these latter services, Section 1.A of these Rules shall apply.

(c) Relationships with MCA-Namibia staff: Consultants (including their personnel and sub-consultants) that have a business or family relationship with a member of MCA-Namibia staff (or of the Project implementing agency's staff, or of a beneficiary of the Compact) who are directly or indirectly involved in any part of: (i) the preparation of the TOR of the contract, (ii) the selection process for such contract, or (iii) the supervision of such contract may not be awarded a contract, unless the conflict stemming from this relationship has been resolved in a manner acceptable to MCC throughout the selection process and the execution of the contract.

Unfair Competitive Advantage

1.10 Fairness and transparency in the selection process require that consultants or their affiliates competing for a specific assignment do not derive a competitive advantage from having provided consultant services related to the assignment in question. To that end, MCA-Namibia shall make available to all the short-listed consultants, together with the Request for Proposals (RFP), all information that would in that respect give a consultant a competitive advantage.

Eligibility

1.11 To foster competition MCC permits firms and individuals from almost all countries⁴⁰ to offer consultant services for MCC-funded Projects. Any conditions for participation shall be limited to those that are essential to ensure the firm's or individual's capability to fulfill the contract in question. However,

(a) Consultants may be excluded if: (i) as a matter of law or official regulation, the Republic of Namibia prohibits commercial relations with the consultant's country, provided that MCC is satisfied that such exclusion does not preclude effective competition for the consultant services required, or (ii) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Republic of Namibia prohibits any payments to a particular firm or person or for particular goods by such an act of compliance, that the firm or individual may be excluded.

(b) Government-owned enterprises in the Republic of Namibia may participate if they are receiving no state subsidy and can demonstrate that they do not receive a cross-subsidy of income as a result of statutory powers.

(c) As an exception to (b), government-owned universities or research centers may participate.

(d) Government officials and civil servants may not be hired under consultant contracts, either as individuals or as members of a team of a consultant firm.

(e) A firm declared ineligible by the World Bank for any reason, including in accordance with The World Bank Group Anti-Corruption policies⁴¹ shall be ineligible to be awarded a MCC-funded contract during the period of time the firm is sanctioned by The World Bank.

⁴⁰ Firms and individuals from any country subject to sanction or restriction by law or policy of the United States are not eligible to compete for MCC-funded contracts. See Sub-paragraph 1.11(f) below.

⁴¹ For purposes of this Sub-paragraph, the relevant World Bank Group Anti-Corruption policies are set forth in the Guidelines On Preventing and Combating Fraud and Corruption in Projects financed by IBRD Loans and IDA Credits and Grants, and in the Anti-corruption Guidelines for IFC, MIGA, and World Bank Guarantee Transactions.

(f) Any person or entity that has been blacklisted from participation in procurements funded with The World Bank assistance or debarred or suspended from participation in procurements funded by the United States Federal Government or otherwise prohibited by applicable United States law or Executive Order or United States policies, including under any then-existing anti-terrorist policies, shall be excluded from procurements awarded under the Compact. Without limiting the foregoing, this would remove from eligibility any procurement from a country or from a firm that is organized in or has its principle place of business or a significant portion of its operations in any country that is subject to sanction or restriction by law or policy of the United States.⁴²

Advance Contracting and Retroactive Financing

1.12 The process of identifying and selecting consultants to implement projects funded under the Compact before the Compact enters into force is referred to as advance contracting. Similarly, payments made under a contract that is signed prior to the Compact entering into force for which MCA-Namibia would seek reimbursement from MCC is known as retroactive financing. MCA-Namibia will not engage in any advance contracting or be entitled to any retroactive financing, without the prior approval of MCC.

Associations between Consultants

1.13 Consultants may associate with each other in the form of a joint venture or of a sub-consultancy agreement to complement their respective areas of expertise, strengthen the technical responsiveness of their proposals and make available bigger pools of experts, provide better approaches and methodologies, and, in some cases, to offer lower prices. Such an association may be for the long term (independent of any particular assignment) or for a specific assignment. If MCA-Namibia employs an association in the form of a joint venture, the association should appoint one of the firms to represent the association; all members of the joint venture shall sign the contract and shall be jointly and severally liable for the entire assignment. Once the solicitation documents, including Requests for Proposals, are issued, any association in the form of joint venture or sub-consultancy among short-listed firms, if applicable, shall be permissible only with the approval of MCA-Namibia, unless specifically permitted in the terms of the Request for Proposals. MCA-Namibia shall not require consultants to form associations with any specific firm or group of firms.

MCC Review, Assistance, and Monitoring

1.14 MCC reviews the hiring of consultants by MCA-Namibia to satisfy itself that the selection process is carried out in accordance with the provisions of these Rules. The thresholds for MCC review are described in Attachment 1 of these Rules.

1.15 MCC does not furnish a short list or a long list⁴³ of firms or individuals to MCA-Namibia. However, if MCA-Namibia undertakes a shortlisting procedure before inviting proposals, the record of the shortlisting procedure together with the final short list shall be submitted to MCC

⁴² As of July 2008, this list includes Cuba, Iran, North Korea, Sudan and Syria.

⁴³ Short list: see Paragraphs 2.6, 2.7 and 2.8 of I.B of these Rules; Long list: a preliminary list of potential firms from which the short list would be established.

for approval before MCA-Namibia issues the RFP if the estimated value of the anticipated contract exceeds the thresholds in Attachment 1 of these Rules.

1.16 MCA-Namibia shall supervise the performance of the consultants and ensure that they carry out the assignments in accordance with the contract. Without assuming the responsibilities of MCA-Namibia or the consultants, MCC shall monitor the work as necessary to satisfy itself that it is being carried out according to appropriate standards and is based on acceptable data. As appropriate, MCC may take part in discussions between MCA-Namibia and the consultants and, if necessary, may help MCA-Namibia in addressing issues related to the assignment. If a significant portion of Project preparation work is being carried out in the consultants' home offices, MCC staff may, with approval of MCA-Namibia, visit these offices to review the consultants' work.

Misprocurement

1.17 MCC does not fund expenditures for consultant services if the consultants or consultant services selected have not been contracted in accordance with the agreed provisions as detailed in the Compact and Supplemental Agreements, these Rules and the approved Procurement Plans.⁴⁴ In such cases, MCC will declare misprocurement and cancel that portion of the Compact allocated to the services that have been misprocured if corrective measures satisfactory to MCC are not taken. MCC may, in addition, exercise other remedies provided for under the Compact. Even once the contract is awarded after obtaining an approval from MCC, MCC may still declare misprocurement if it concludes that the approval was issued on the basis of incomplete, inaccurate, or misleading information furnished by MCA-Namibia or the terms and conditions of the contract had been modified without MCC approval.

References to MCC

1.18 MCA-Namibia shall use the following language when referring to MCC in procurement documents:

The United States of America, acting through the Millennium Challenge Corporation ("MCC") and the Republic of Namibia (the "Government") have entered into a Millennium Challenge Compact for Millennium Challenge Account assistance to help facilitate poverty reduction through economic growth in the Republic of Namibia (the "Compact") in the amount of [Insert amount of Compact] US\$ ("MCC Funding"). MCA-Namibia on behalf of the Government intends to apply a portion of the proceeds of MCC Funding to eligible payments under this contract. Payments by MCA-Namibia will be subject, in all respects, to the terms and conditions, including restrictions on the use of MCC Funding, of the Compact. No party other than the Government and MCA-Namibia shall derive any rights from the Compact or have any claim to the proceeds of MCC Funding.

Training or Transfer of Knowledge

1.19 If the assignment includes an important component for training or transfer of knowledge to MCA-Namibia staff or national consultants, the TOR shall indicate the objectives, nature, scope, and goals of the training program, including details on trainers and trainees, skills to be

⁴⁴ See Paragraph 1.24.1, 1.24.2, and 1.24.3 of Section 1.B of these Rules.

transferred, time frame, and monitoring and evaluation arrangements. The cost for the training program shall be included in the consultant's contract and in the budget for the assignment.

Language

1.20 All advertisements for contracts and notices of contract awards, whether posted at MCA-Namibia's website, at dgMarket, or UNDB Online, shall be posted in English.

1.21 For all contracts, the solicitation documents as well as the documents responding to these solicitations, including the proposals, shall be prepared in English. All contracts shall be written in English and this language shall govern contractual relations between MCA-Namibia and the consultant.

Fraud and Corruption

1.22 MCC requires that MCA-Namibia (and other beneficiaries of MCC funding), as well as consultants and their subcontractors under any MCC-funded contracts, observe the highest standards of ethics during the procurement and execution of such contracts. In pursuance of this policy, the following provisions shall apply.

(a) For the purposes of these provisions, the terms set forth below are defined as follows:

(i) "corrupt practice" means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of a public official (including MCA-Namibia and MCC staff and employees of other organizations taking or reviewing selection decisions) in the selection process or in contract execution or the making of any payment to any third party, in connection with or in furtherance of a contract, in violation of (aa) the United States Foreign Corrupt Practices Act of 1977, as amended (15 USC 78a *et seq.*) ("FCPA"), or any other actions taken that otherwise would be in violation of the FCPA if the FCPA were applicable, or (bb) any applicable law in the Republic of Namibia;

(ii) "fraudulent practice" means any act or omission, including any misrepresentation, in order to influence (or attempt to influence) a selection process or the execution of a contract to obtain a financial or other benefit, or to avoid (or attempt to avoid) an obligation;

(iii) "collusive practice" means a scheme or arrangement between two or more parties, with or without the knowledge of MCA-Namibia, designed to establish prices at artificial, noncompetitive levels or to otherwise deprive MCA-Namibia of the benefits of free and open competition;

(iv) "coercive practice" means impairing or harming or threatening to impair or harm, directly or indirectly, persons or their property, to influence their participation in a procurement process, or affect the execution of a contract;

(v) "obstructive practice" means:

(aa) destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to impede an investigation into allegations of a corrupt, fraudulent, coercive, collusive, or prohibited practice; and threatening, harassing, or

intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; and

(bb) acts intended to impede the exercise of the inspection and audit rights of MCC provided under the Compact; and

(vi) "prohibited practice" means any action that violates Section E (Compliance with Anti-Corruption Legislation), Section F (Compliance with Anti-Money Laundering Legislation) and Section G (Compliance with Terrorist Financing Statutes and Other Restrictions) of the "General Provisions Annex" that will be made a part of MCC-funded contracts and may be found on the MCC website at http://www.mcc.gov/guidance/compact/general_provisions.pdf.

(b) MCA-Namibia will reject a proposal (and MCC will deny approval of a proposal for contract award) if it determines that the consultant recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, obstructive or prohibited practices in competing for the contract in question.

(c) MCC has the right to cancel the portion of MCC funding allocated to a contract if it determines at any time that representatives of a beneficiary of the MCC funding engaged in corrupt, fraudulent, collusive, coercive, obstructive or prohibited practices during the selection process or the execution of a MCC-funded contract, without MCA-Namibia having taken timely and appropriate action satisfactory to MCC to remedy the situation.

(d) MCC and MCA-Namibia have the right to sanction a consultant, including declaring such party ineligible, either indefinitely or for a stated period of time, to be awarded an MCC-funded contract if at any time either MCA-Namibia or MCC determines that the bidder, supplier, contractor, or subcontractor has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, obstructive or prohibited practices in competing for, or in executing, such a contract.

(e) MCC and MCA-Namibia have the right to require that a provision be included in solicitation documents and in MCC-funded contracts requiring a consultant to permit MCA-Namibia, MCC, or any designee of MCC, to inspect its accounts, records and other documents relating to the submission of a proposal or performance of a MCC-funded contract and to have them audited by auditors appointed by MCC or MCA-Namibia with the approval of MCC.

1.23 To the extent required by Namibian law, MCA-Namibia shall introduce, into bid forms for large contracts funded by MCC, an undertaking of the bidder to observe, in competing for and executing a contract, the country's laws against fraud and corruption (including bribery), as listed in the solicitation documents. In the event such an undertaking is not required by Namibian law, MCA-Namibia may introduce the undertaking with the approval of MCC.

Procurement Plan

1.24.1 MCA-Namibia shall prepare periodic procurement plans that are updated at least semi-annually, for acquiring consultant services needed to implement the Compact ("**Procurement Plan**"). Each Procurement Plan shall be adopted by the governing body of MCA-Namibia and

shall be submitted to MCC for its approval. Each Procurement Plan⁴⁵, typically covering a six (6) month period, (a) lists the particular contracts for the consultant services required to implement the Compact for the period covered in such Procurement Plan; (b) identifies the proposed method of procurement and selection procedure for such contracts as determined according to the rules set out in these Rules; and (c) sets forth the estimated value for each consultant contract.

1.24.2 MCA-Namibia shall ensure that all consultant services shall be procured using the procurement method and selection procedure approved in each Procurement Plan. Compliance, satisfactory to MCC, with the approved Procurement Plan shall be a condition precedent to MCC Disbursements.

1.24.3 MCA-Namibia shall not initiate any procurement action that is a substantial deviation from the applicable adopted and approved Procurement Plan without the prior approval of MCC. If MCA-Namibia determines that such a deviation is necessary or appropriate, MCA-Namibia shall submit a request to MCC for its approval of an amended Procurement Plan. If approved by MCC, MCA-Namibia shall comply with any instructions contained in the MCC approval, including any publication requirements. Any substantial deviation from a Procurement Plan as approved and adopted shall be submitted to the governing body of MCA-Namibia for adoption of the amended Procurement Plan.

II. QUALITY AND COST BASED SELECTION

The Selection Process

2.1 QCBS uses a competitive process that takes into account the quality of the proposal and the cost of the services in the selection of the successful firm. Cost as a factor of selection shall be used judiciously. The relative weight to be given to the quality and cost shall be determined for each case depending on the nature of the assignment.

2.2 The selection process includes the following steps unless MCC approves a modification in the procedure that is justified under the circumstances of a particular procurement:

(a) preparation of the Terms of Reference;

(b) preparation of a cost estimate and the budget;

(c) advertising;

(d) preparation of the short list of consultants; *(This step is not mandatory. MCA-Namibia may at its discretion issue the Request for Proposals to all consultants expressing interest in the procurement.)*

(e) preparation and issuance of the Request for Proposals which should include: the Letter of Invitation; Instructions to Consultants; the Terms of Reference and the proposed draft contract;

⁴⁵ When goods, works and non-consultant services also need to be procured, the Procurement Plan must also include such procurements in accordance with the requirements at Section I.A, Paragraphs 1.16.1, 1.16.2, and 1.16.3 of these Rules.

- (f) receipt of proposals;
- (g) evaluation of technical proposals: consideration of quality;
- (h) public opening of financial proposals;
- (i) evaluation of financial proposals;
- (j) final evaluation of quality and cost; and
- (k) negotiations and award of the contract to the selected firm.

Terms of Reference (“TOR”)

2.3 MCA-Namibia shall be responsible for preparing the TOR for the assignment. The TOR shall be prepared by a person(s) or a firm specialized in the area of the assignment. The scope of the services described in the TOR shall be compatible with the available budget. The TOR shall define clearly the objectives, goals, and scope of the assignment and provide background information (including a list of existing relevant studies and basic data) to facilitate the consultants’ preparation of their proposals. If transfer of knowledge or training is an objective, it should be specifically outlined along with details of number of staff to be trained, and so forth, to enable consultants to estimate the required resources. The TOR shall list the services and surveys necessary to carry out the assignment and the expected outputs (for example, reports, data, maps, surveys). It shall also list criteria that will be used to evaluate the bids. However, the TOR should not be too detailed or inflexible, so as to prevent competing consultants from proposing their own methodology and staffing. Firms shall be encouraged to comment on the TOR in their proposals. The respective responsibilities of MCA-Namibia, the implementing entity (if relevant) and the consultant should be defined clearly in the TOR.

Cost Estimate (Budget)

2.4 Preparation of a well thought-through cost estimate is essential if MCC funding is to be managed properly. The cost estimate shall be based on MCA-Namibia’s assessment of the resources needed to carry out the assignment: staff time, logistical support, and physical inputs (e.g. vehicles and laboratory equipment).

Advertising

2.5.1 On at least a semi-annual basis, MCA-Namibia shall publicize in the General Procurement Notice (GPN) the procurements planned for consultant services for the upcoming period as identified in the adopted Procurement Plan which was approved by MCC. The General Procurement Notice shall be in the form acceptable to MCC and shall include information derived from the Procurement Plan and the name, telephone (or fax) number, and address of the MCA-Namibia agent responsible for procurement and the address of the website(s) where Specific Procurement Notices will be posted. If known, the scheduled date for availability of solicitation documents for each procurement should be indicated. Such solicitation documents shall not be released to the public earlier than the date of publication of the General and Specific Procurement Notices. The General Procurement Notice shall be advertised in a manner to

provide reasonable notice of planned procurements to potential consultants. Advertisement of the General Procurement Notice shall include posting in English at MCA-Namibia's website (or such other appropriate website designated by MCA-Namibia and approved by MCC), dgMarket and UNDB Online.⁴⁶ MCA-Namibia shall also publish the General Procurement Notice in a newspaper of wide circulation in the Republic of Namibia and in such other media outlets as appropriate or as requested from time to time by MCC.

2.5.2 Request for Expressions of Interest (EOI), Request for Proposals (RFP) or Request for Consultant Qualifications (RCQ) shall be advertised as Specific Procurement Notices (SPN). For contracts valued less than or equal to US\$500,000, such requests shall be published in at least one newspaper of national circulation in the Republic of Namibia and posted at MCA-Namibia's website (or such other appropriate website designated by MCA-Namibia and approved by MCC). For contracts valued over US\$500,000, MCA-Namibia must also post the Specific Procurement Notice at UNDB Online and at the dgMarket website. Publication in local print and broadcast and other national and international media is encouraged as long as the posting does not pre-date the required postings. The text of the notice, whether an EOI, an RFP or an RCQ may be subject to review by MCC. Notification shall be given in sufficient time to enable prospective consultants to obtain information, or the relevant solicitation documents, and prepare and submit their responses, taking into consideration the estimated value of the contract and period of advance notice given with the General Procurement Notice.⁴⁷

Short List of Consultants

2.6 At its discretion, MCA-Namibia may advertise for expressions of interest and invite only short-listed firms or individuals to submit proposals or qualifications as appropriate for the selection procedure chosen for the particular procurement, or MCA-Namibia may begin the procurement with an open request for proposals or consultation qualifications. When MCA-Namibia chooses to begin a procurement with a shortlisting procedure, MCA-Namibia is responsible for preparation of the short list. There is no maximum limit to the number of firms that may be short-listed and care should be taken not to eliminate any qualified participants from competing for the consultant contract. Consideration for shortlisting must be given to all firms or organizations – national and international – expressing interest and possessing the relevant qualifications. The method for developing a short list shall be fair and objective according to pre-announced criteria.

2.7 Reserved

2.8 Selection based upon Consultants Qualifications is generally used for small assignments.⁴⁸

⁴⁶ UNDB is a publication of the United Nations. Subscription information is available from: Development Business, United Nations, GPO Box 5850, New York, NY 10163-5850, USA (Website: www.devbusiness.com; e-mail: dbsubscribe@un.org); Development Gateway Market is an electronic portal of Development Gateway Foundation, 1889 F Street, N.W. Washington, DC 20006, USA (Website: www.dgmarket.com).

⁴⁷ Also see Paragraph 2.13 of Section I.B of these Rules.

⁴⁸ Dollar thresholds defining "small" shall be determined in each case, taking into account the nature and complexity of the assignment, but generally will not exceed US\$200,000.

Preparation and Issuance of the Request for Proposals ("RFP")

2.9 The RFP shall include (a) a Letter of Invitation, (b) Information to Consultants, (c) the TOR, and (d) the proposed contract. MCA-Namibia shall use the applicable Standard Proposal Documents, as approved by MCC pursuant to Part 3 of these Rules, as may be modified to address Project-specific conditions, subject to MCC approval when the change is material. MCA-Namibia may use an electronic system to distribute the RFP, provided that MCC is satisfied with the adequacy of such system. If the RFP is distributed electronically, the electronic system shall be secure to avoid modifications to the RFP and shall not unfairly restrict the access of consultants to the RFP.

Letter of Invitation ("LOI")

2.10 The LOI shall state the intention of MCA-Namibia to enter into a contract for the provision of consultant services, the source of funds, the details of MCA-Namibia and the date, time, and address for submission of proposals.

Instructions to Consultants ("ITC")

2.11 The ITC shall contain all necessary information that would help consultants prepare responsive proposals, and shall bring as much transparency as possible to the selection procedure by providing information on the evaluation process and by indicating the evaluation criteria and methodology and their relative weights and the minimum passing quality score. The ITC may indicate an estimate of the level of key staff inputs (in staff time) required of the consultants or may provide the total budget, but neither item of information is required. The ITC shall specify the proposal validity period, which should be adequate for the evaluation of proposals, decision on award, MCC review, and finalization of contract negotiations. A detailed list of the information that should be included in the ITC is provided in Appendix 2 of this Section 1.B.

Contract

2.12 Sub-Section 1.B.IV of these Rules briefly discusses the most common types of contracts. MCA-Namibia shall use an appropriate form of contract acceptable to MCC. Any changes to standard conditions shall be introduced generally through the forms and procedures defined in the Standard Proposal Documents. When the Standard Proposal Documents are not appropriate (for example, for preshipment inspection and procurement services), MCA-Namibia shall use other contract forms acceptable to MCC.

Receipt of Proposals

2.13 MCA-Namibia shall allow enough time for the consultants to prepare their proposals. The time allowed shall depend on the assignment, the value of the contract, the difficulty of preparing a technical proposal and the duration of the advance notice given with posting of the General Procurement Notice. During this interval, the firms may request clarifications about the information provided in the RFP. MCA-Namibia shall provide these clarifications in writing and copy them to all firms either registered or on the short list (who intend to submit proposals). If necessary, MCA-Namibia shall extend the deadline for submission of proposals. The technical and financial proposals shall be submitted at the same time. No amendments to the technical or financial proposals shall be accepted after the deadline. To safeguard the integrity of the

process, the technical and financial proposals shall be submitted in separate sealed envelopes. The technical envelopes shall be opened immediately by a committee of officials drawn from the relevant departments (technical, finance or legal, as appropriate), after the closing time for submission of proposals. The financial proposals shall remain sealed and shall be properly secured until they are opened publicly. Any proposal received after the closing time for submission of proposals shall be returned unopened after the time for protest has expired. MCA-Namibia may use electronic systems permitting consultants to submit proposals by electronic means, provided MCC is satisfied with the adequacy of the system, including, *inter alia*, that the system is secure, maintains the confidentiality and authenticity of proposals submitted, uses an electronic signature system or equivalent to keep consultants bound to their proposals, and only allows proposals to be opened with due simultaneous electronic authorization of the consultant and MCA-Namibia. In this case, consultants shall continue to have the option to submit their proposals in hard copy.

Evaluation of Proposals: Consideration of Quality and Cost

2.14 The evaluation of the proposals shall be carried out in two stages: 1. quality, 2. cost. Evaluators of technical proposals shall not have access to the financial proposals until the technical evaluation, including any required MCC reviews and approvals, is concluded. Financial proposals shall be opened only thereafter. The evaluation shall be carried out in full conformity with the provisions of the RFP.

Evaluation of the Quality

2.15 MCA-Namibia shall evaluate each technical proposal (using a technical evaluation panel of generally three or more technical specialists in the sector), taking into account appropriate evaluation criteria as set out in the RFP. Evaluation criteria may include (a) the consultant's relevant experience for the assignment, (b) the quality of the methodology proposed, and (c) the qualifications of the key staff proposed. The relative weight of each criterion shall be disclosed in the RFP. The score for each proposal may be determined based upon the total point system or other methodology for evaluating and comparing responses fairly. When applying the total point method, each criterion is marked on a scale of 1 to 100 according to the specific needs of the assignment.

2.16 MCA-Namibia may divide these criteria into sub-criteria. For example, sub-criteria under methodology might be innovation and level of detail. However, the number of sub-criteria should be limited to the essential. MCC recommends against the use of exceedingly detailed lists of sub-criteria that may render the evaluation a mechanical exercise more than a professional assessment of the proposals. If the shortlisting procedure was applied, the weight given to experience can be relatively modest, since this criterion has already been taken into account during the shortlisting process. More weight might be given to the methodology in the case of more complex assignments (for example, multidisciplinary feasibility or management studies).

2.17 Evaluation of key personnel is recommended. Since key personnel ultimately determine the quality of performance, more weight shall be assigned to this criterion if the proposed assignment is complex. MCA-Namibia shall review the qualifications and experience of proposed key personnel in their curricula vitae, which must be accurate, complete, and signed by

an authorized official of the consultant firm and the individual proposed. The individuals might be rated in the following three sub-criteria, as relevant to the task:

(a) general qualifications: general education and training, length of experience, positions held, time with the consultant firm as staff, experience in developing countries, and so forth;

(b) adequacy for the assignment: education, training, and experience in the specific sector, field, subject, and so forth, relevant to the particular assignment; and

(c) experience in the region: knowledge of the local language, culture, administrative system, government organization, and so forth.

2.18 MCA-Namibia shall evaluate each proposal on the basis of its responsiveness to the TOR. A proposal shall be considered unsuitable and shall be rejected at this stage if it does not respond to important aspects of the TOR or it fails to achieve a minimum technical score specified in the RFP.

2.19 At the end of the process, MCA-Namibia shall prepare a technical evaluation report of the "quality" of the proposals and, in the case of contracts subject to prior review, submit it to MCC for its review and approval. The report shall substantiate the results of the evaluation and describe the relative strengths and weaknesses of the proposals. All records relating to the evaluation, such as individual mark sheets, shall be retained until completion of the Project and its audit.

Evaluation of Financial Proposals

2.20 After the evaluation of quality is completed and the required reviews and approvals have been issued, MCA-Namibia shall inform the consultants who have submitted proposals of the technical points assigned to each consultant and shall notify those consultants whose proposals did not meet the minimum qualifying mark or were considered nonresponsive to the RFP and the TOR that their financial proposals will be returned unopened after the signature of the contract. MCA-Namibia shall simultaneously notify the consultants that have secured at least the minimum qualifying mark of the date, time, and place set for opening the financial proposals. If the procurement is on the critical path for implementation of the Compact, the opening date may be defined to allow very short notice for consultants to make arrangements to attend the opening of the financial proposals. In such case, MCA-Namibia shall arrange for the record of the proceedings of the opening to be signed by at least two independent witnesses. The financial proposals shall be opened publicly in the presence of representatives of the consultants who choose to attend (in person or online). The name of the consultant, the technical points, and the proposed prices shall be read aloud (and posted online when electronic submission of proposals is used) and recorded when the financial proposals are opened. MCA-Namibia shall also prepare the minutes of the public opening and a copy of this record shall be included in the record of the procurement and provided to all consultants who submitted proposals. A copy of the record shall be sent to MCC when the proposed award is subject to prior review by MCC.

2.21 MCA-Namibia shall then review the financial proposals. If there are any arithmetical errors, they shall be corrected. For the purpose of comparing proposals, the RFP shall require that all proposals be stated in the same currency (local currency of the Republic of Namibia, or US\$ or a combination of the two) as required in the RFP. If there is a need to make a conversion

between the two allowable currencies, the RFP shall specify the source of the exchange rate to be used and the date of that exchange rate, provided that the date shall not be earlier than four weeks prior to the deadline for submission of proposals, nor later than the original date of expiration of the period of validity of the proposal. Any proposal that deviates from the currency requirement as stated in the RFP may be rejected as non-responsive.

2.22 For the purpose of evaluation, the financial proposals shall include or exclude local identifiable direct or indirect taxes as instructed in the RFP. The financial proposal shall include all consultants' remuneration and other expenses such as travel, translation, report printing, or secretarial expenses. When the total point evaluation methodology is used, the financial proposal with the lowest price may be given a financial score of 100 and other proposals given financial scores that are inversely proportional to their prices. Alternatively, a directly proportional or other methodology may be used in allocating the marks for the financial proposal. The methodology to be used shall be described in the RFP.

Combined Quality and Price Evaluation

2.23.1 The total score shall be obtained by weighing the quality and price scores and adding them. The weight for the financial proposal shall be assigned, taking into account the complexity of the assignment and the relative importance of quality. The proposed weightings for quality and price shall be specified in the RFP. The firm obtaining the highest total score shall be invited for negotiations.

2.23.2 When the procurement is subject to MCC prior review for proposed award, MCA-Namibia, before inviting the firm obtaining the highest total score for negotiations, shall furnish to MCC for its review and approval a full description of the procurement process including an account of all protests and appeals and other significant problems or defects during the process and a description of how these were resolved.

Negotiations and Award of Contract

2.24 Negotiations shall include discussions of the TOR, the methodology, staffing, inputs by MCA-Namibia and special conditions of the contract. These discussions shall not substantially alter the original TOR or the terms of the contract, lest the procurement process be invalidated. Major reductions in work inputs should not be made solely to meet the budget. The final TOR and the agreed methodology shall be incorporated into "Description of Services," which shall form part of the contract.

2.25 The selected firm should not be allowed to substitute key staff, unless both parties agree that undue delay in the selection process makes such substitution unavoidable or that such changes are critical to meet the objectives of the assignment. If this is not the case and if it is established that key staff were included in the proposal without confirming their availability, the firm may be disqualified and the process continued with the next ranked firm. The key staff proposed for substitution shall have qualifications equal to or better than the key staff initially proposed.

2.26 Financial negotiations shall include clarification of the consultants' tax liability in the Republic of Namibia (if any) to ensure that the contract is consistent with the provisions of the Compact and Supplemental Agreement. As payments under fixed-price contracts are based on work done and delivery of outputs (or products), the offered price shall include all costs (staff

time, overhead, travel, hotel, etc.). Consequently, if the selection method for a fixed-price contract included price as a component, this price shall not be negotiated. In the case of Time-Based Contracts, payment is based on inputs (staff time and reimbursables) and the offered price shall include staff rates and an estimation of the amount of reimbursables. When the selection method includes price as a component, negotiations of staff rates should not take place, except in special circumstances, such as when staff rates offered are much higher than rates typically charged by consultants in similar circumstances for similar contracts. Consequently, the prohibition of negotiation does not preclude the right of MCA-Namibia to ask for clarifications, and, if fees are very high, to ask for change of fees, after due consultation with MCC.

Reimbursables are to be paid on actual expenses incurred at cost, subject to limitations set out in MCC Cost Principles, upon presentation of receipts and therefore are not subject to negotiations. However, if MCA-Namibia wants to define ceilings for unit prices of certain reimbursables (like travel or hotel rates), it should indicate the maximum levels of those rates in the RFP or define a per diem in the RFP. If the contract permits reimbursement of any costs, the reimbursement rates shall be limited by applicable MCC Cost Principles ("*MCC Cost Principles*") found at the MCC website, www.mcc.gov.

2.27 If the negotiations fail to result in an acceptable contract, MCA-Namibia shall terminate the negotiations and invite the next ranked firm for negotiations. MCA-Namibia shall consult with MCC prior to taking this step. The consultant shall be informed of the reasons for termination of the negotiations. Once negotiations are commenced with the next ranked firm, MCA-Namibia shall not reopen the earlier negotiations. After negotiations are successfully completed and all required reviews and approvals have been issued, MCA-Namibia shall promptly notify other firms on the short list that they were unsuccessful.

Publication of the Award of Contract

2.28 After the award of contract, MCA-Namibia shall post at UNDB Online, at dgMarket and at MCA-Namibia's website (or such other appropriate website designated by MCA-Namibia and approved by MCC) the results, identifying the procurement, the name of the winning consultant and the price, duration, and summary scope of the contract. The same information shall be sent to all consultants who have submitted proposals. The posting at UNDB Online and at dgMarket must be done monthly and at MCA-Namibia's website (or such other appropriate website designated by MCA-Namibia and approved by MCC) at least weekly. The posting shall be in a format of a summarized table covering the previous period. All such postings shall be in English.

Debriefing

2.29 In the publication of contract award referred to in Paragraph 2.28 above, MCA-Namibia shall specify that any consultant who wishes to ascertain the grounds on which its proposal was not selected should request an explanation from MCA-Namibia. MCA-Namibia shall promptly provide the explanation as to why such proposal was not selected, in writing and/or in a debriefing meeting, at the option of the consultant. The requesting consultant shall bear all the costs of attending such a debriefing.

Rejection of All Proposals, and Re-invitation

2.30 MCA-Namibia will be justified in rejecting all proposals only if all proposals are nonresponsive because they present major deficiencies in complying with the TOR, if they involve prices substantially higher than the original estimate, or if contracting for the services is no longer in the best interest of implementation of the Compact. In the case of a higher price, the feasibility of increasing the budget, or scaling down the scope of services with the firm should be investigated in consultation with MCC. Before all the proposals are rejected and new proposals are invited, MCA-Namibia shall notify MCC, indicating the reasons for rejection of all proposals, and shall obtain MCC's approval before proceeding with the rejection and the new process. The new process may include revising the RFP (including the short list) and the budget. These revisions shall be agreed upon with MCC. Within two weeks of the rejection of all proposals, MCA-Namibia shall post at dgMarket and MCA-Namibia's website (or such other appropriate website designated by MCA-Namibia and approved by MCC) notification of the cancellation of the procurement. The notification shall identify the procurement and state briefly the reasons for cancellation. The same information shall be sent to all those who have submitted proposals. All such postings shall be in English.

Confidentiality

2.31 Information relating to evaluation of proposals and recommendations concerning awards shall not be disclosed to the consultants who submitted the proposals, or to other persons not officially concerned with the process, until the publication of the award of contract, except as provided in Paragraphs 2.20 and 2.27 of Section 1.B of these Rules.

III. OTHER METHODS OF SELECTION

General

3.1 This Sub-Section 1.B.III describes the selection methods other than QCBS, and the circumstances under which they are acceptable. All the relevant⁴⁹ provisions of Sub-Section 1.B.II (QCBS) shall apply whenever competition is used.

Quality Based Selection ("QBS")

3.2 QBS may be appropriate for the following types of assignments:

- (a) complex or highly specialized assignments for which it is difficult to define precise TORs and the required input from the consultants, and for which MCA-Namibia expects the consultants to demonstrate innovation in their proposals;
- (b) assignments that have a high downstream impact and in which the objective is to have the best experts; and

⁴⁹ All provisions of Sub-Section 1.B.II shall be applied with the modifications and suppressions required by the method for selecting consultants used in the specific case. Advertisement is not required when single source selection is used.

(c) assignments that can be carried out in substantially different ways, such that proposals will not be comparable.

3.3 In QBS, the RFP may request submission of a technical proposal only (without the financial proposal), or request submission of both technical and financial proposals at the same time, but in separate envelopes (two-envelope system). The procurement shall be advertised according to the requirements set out in Paragraphs 2.5.1 and 2.5.2 of Section 1.B. and may, at the discretion of MCA-Namibia, be preceded by a shortlisting procedure (see Paragraphs 2.6 to 2.8 of Section 1.B). The RFP may provide either the estimated budget or the estimated number of key staff time, specifying that this information is given as an indication only and that consultants shall be free to propose their own estimates.

3.4 If technical proposals alone were invited, after evaluating the technical proposals using the same methodology as in QCBS, MCA-Namibia shall ask the consultant with the highest ranked technical proposal to submit a detailed financial proposal. MCA-Namibia and the consultant shall then negotiate the financial proposal and the contract. All other aspects of the selection process shall be identical to those of QCBS, including the publication of the award of contract as described in Paragraph 2.28. If consultants were requested to provide financial proposals initially together with the technical proposals, safeguards shall be built in as in QCBS to ensure that, after the negotiations are successfully concluded, the financial proposal of only the selected firm is opened and the rest are returned unopened.

Selection under a Fixed Budget (“FBS”)

3.5 This method is appropriate when the assignment is simple and can be precisely defined. The RFP shall indicate the available budget and request the consultants to provide their best technical and financial proposals, which stay within the budget, in separate envelopes. The TOR should be particularly well prepared to make sure that the budget is sufficient for the consultants to perform the expected tasks. The procurement shall be advertised according to the requirements set out in Paragraphs 2.5.1 and 2.5.2 of Section 1.B. and may, at the discretion of MCA-Namibia, be preceded by a shortlisting procedure (see Paragraphs 2.6 to 2.8 of Section 1.B). Evaluation of all technical proposals shall be carried out first as in the QCBS method. Then the financial proposals shall be opened in public and prices shall be read aloud. Proposals that exceed the indicated budget shall be rejected. The consultant who has submitted the highest ranked technical proposal shall be selected and invited to negotiate a contract. The publication of the Award of Contract shall be as described in Paragraph 2.28.

Least-Cost Selection (“LCS”)

3.6 This method is appropriate for selecting consultants for assignments of a standard or routine nature (audits, engineering design of noncomplex works, etc.) where well established practices and standards exist. Under this method, a “minimum” qualifying mark for the “quality” is established. Proposals, to be submitted in two envelopes, are invited. The procurement shall be advertised according to the requirements set out in Paragraphs 2.5.1 and 2.5.2 of Section 1.B, and may, at the discretion of MCA-Namibia, be preceded by a shortlisting procedure (see Paragraphs 2.6 to 2.8 of Section 1.B). Technical proposals are opened first and evaluated.

Those securing less than the minimum qualifying mark⁵⁰ are rejected, and the financial proposals of the rest are opened in public. The firm with the lowest price shall then be selected and the publication of the award of contract shall be as described in Paragraph 2.28. Under this method, the minimum qualifying mark shall be established, understanding that all proposals above the minimum compete only on "price." The minimum qualifying mark shall be stated in the RFP.

Selection Based on the Consultants' Qualifications ("CQS")

3.7 This method may be used for small⁵¹ assignments for which the need for preparing and evaluating competitive proposals is not justified. In such cases, MCA-Namibia shall prepare the TOR, request information on the consultants' experience and competence relevant to the assignment, and select the firm with the most appropriate qualifications and references. The procurement shall be advertised according to the requirements set out in Paragraphs 2.5.1 and 2.5.2 of Section 1.B and may, at the discretion of MCA-Namibia, be preceded by a shortlisting procedure (see Paragraphs 2.6 to 2.8 of Section 1.B). The selected firm shall be asked to submit a combined technical and financial proposal and then be invited to negotiate the contract.

3.8 The publication of the award of contract shall be as described in Paragraph 2.28.

Single-Source Selection ("SSS")

3.9 Single-source selection of consultants does not provide the benefits of competition with regard to quality and cost, lacks transparency in selection, and could encourage unacceptable practices. Therefore, single-source selection shall be used only in exceptional cases. The justification for single-source selection shall be examined in the context of the overall interests of MCA-Namibia and implementation of the Compact and the responsibility of MCC to ensure economy and efficiency and provide equal opportunity to all qualified consultants.

3.10 Single-source selection may be appropriate only if it presents a clear advantage over competition: (a) for tasks that represent a natural continuation of previous work carried out by the firm (see Paragraph 3.11), (b) in emergency cases, such as in response to disasters and for consultant services required during the period of time immediately following the emergency, (c) for very small⁵² assignments, or (d) when only one firm is qualified or has experience of exceptional worth for the assignment.

3.11 When continuity for downstream work is essential, the initial RFP shall outline this prospect, and if practical, the factors used for the selection of the consultant shall take the likelihood of continuation into account. Continuity in the technical approach, experience acquired, and continued professional liability of the same consultant may make continuation with the initial consultant preferable to a new competition, subject to satisfactory performance in the initial assignment. For such downstream assignments, MCA-Namibia shall ask the initially

⁵⁰ This method shall not be used as a substitute for QCBS and shall be used only for the specific cases of very standard and routine technical nature where the intellectual component is minor. For this method the minimum qualifying mark shall be 70 points or higher.

⁵¹ Dollar thresholds defining "small" shall be determined and justified in writing in each case, taking into account the nature and complexity of the assignment, but shall not exceed US\$200,000 except in exceptional circumstances and specifically approved by MCC.

⁵² Dollar thresholds defining "very small" shall be determined in each case, taking into account the nature and complexity of the assignment, but shall not exceed USD2,000.

selected consultant to prepare technical and financial proposals on the basis of the TOR furnished by MCA-Namibia, which shall then be negotiated.

3.12 If the initial assignment was not awarded on a competitive basis or if the downstream assignment is substantially larger in value, a competitive process acceptable to MCC shall normally be followed in which the consultant carrying out the initial work is not excluded from consideration if it expresses interest. MCC will consider exceptions to this rule only under special circumstances and only when a new competitive process is not practicable.

3.13 The publication of the award of contract shall be as described in Section 1.B, Paragraph 2.28.

3.14 Reserved

Selection of Particular Types of Consultants

3.15 Reserved

3.16 Reserved

3.17 *Procurement Agents and Fiscal Agents.* MCA-Namibia may wish (or be required by MCC) to employ, as its agents, firms that specialize in handling procurement and/or financial management services. Such agents shall be selected following these Rules (or such other procedures as MCC may approve) and the procedures set out in the RFP requesting such agent services. When performing procurement agent services, the procurement agent shall follow the procurement procedures outlined in the Compact and Supplemental Agreements, in the Procurement Plan approved by MCC, and in these Rules.

3.18 *Inspection Agents.* MCA-Namibia may wish to employ inspection agencies to inspect and certify goods prior to shipment or on arrival in the Republic of Namibia. The inspection by such agencies usually covers the quality and quantity of the goods concerned and reasonableness of price. Inspection agencies shall be selected using the procedures set out in the approved and adopted Procurement Plan.

3.19 *Banks.* MCA-Namibia may require the services of investment and commercial banks, financial firms, and fund managers to implement the Compact. To procure these services, the RFP shall specify clearly how proposals will be presented and how they will be compared.

3.20 *Auditors.* Auditors typically carry out auditing tasks under well defined TOR and professional standards. MCA-Namibia shall select auditors according to the instructions provided to it by MCC including MCC's Standard Proposal Document for auditor services.

3.21 *Service Delivery Contractors.* Projects in the social sectors in particular may involve hiring of large numbers of individuals who deliver services on a contract basis (for example, social workers, such as nurses and paramedics). The job descriptions, minimum qualifications, terms of employment, selection procedures, and the extent of MCC review of these procedures and documents shall be described in the Project documentation, and the contract shall be included in the Procurement Plan approved by MCC.

IV. TYPES OF CONTRACTS AND IMPORTANT PROVISIONS

Types of Contracts

4.1 *Fixed-Price Contract ("Fixed-Price Contract")*. Fixed-Price Contracts may take various forms such as lump sum, unit price and percentage fees.⁵³ Fixed-Price Contracts are used mainly for assignments in which the content and the duration of the services and the required output of the consultants are clearly defined. They are widely used for simple planning and feasibility studies, environmental studies, detailed design of standard or common structures, preparation of data processing systems, and so forth. Payments are linked to work done in performance of the contract and to outputs (deliverables), such as reports, drawings, bills of quantities, bidding documents, and software programs. Fixed-Price Contracts are easier to administer than Time-Based Contracts (defined below) because payments are due on clearly specified outputs.

4.2 *Time-Based Contract ("Time-Based Contract")*. This type of contract is appropriate when it is difficult to define the scope and the length of services, either because the services are related to activities by others for which the completion period may vary, or because the input of the consultants required to attain the objectives of the assignment is difficult to assess. Payments are based on agreed hourly, daily, weekly, or monthly rates for staff (who are normally named in the contract) and on reimbursable items using actual expenses and/or agreed unit prices. Time-based contracts need to be closely monitored and administered by MCA-Namibia to ensure that the assignment is progressing satisfactorily and that payments claimed by the consultants are appropriate. For contracts that permit reimbursement of any costs, the reimbursement rates shall be limited by applicable MCC Cost Principles. The costs shall also be subject to audit in accordance with the requirements set out in the Compact and the Supplemental Agreements.

4.3 Reserved

4.4 *Percentage Contract*. These contracts are commonly used for architectural services. They may also be used for procurement and inspection agents. Percentage Contracts directly relate the fees paid to the consultant to the estimated or actual Project construction cost, or the cost of the goods procured or inspected. The contracts are negotiated on the basis of market norms for the services and/or estimated staff-month costs for the services, or competitively bid. It should be borne in mind that in the case of architectural or engineering services, Percentage Contracts implicitly lack incentive for economic design and are hence discouraged. Therefore, the use of such a contract for architectural services is recommended only if it is based on a fixed target cost and covers precisely defined services (for example, not works supervision.).

4.5.1 *Indefinite Delivery and Indefinite Quantity ("IDIQ") Contract*. These contracts are used when MCA-Namibia needs to have "on call" specialized services to provide advice on a particular activity, the extent and timing of which cannot be defined in advance. These are commonly used to retain "advisers" for implementation of complex Projects, expert adjudicators

⁵³ Percentage contracts directly relate the fees paid to the consultant to the estimated or actual project construction cost, the cost of the goods procured or inspected or other measure of service such as in the case of Procurement Agent, the value of contracts procured or for Fiscal Agent the amount of funds disbursed. Percentage contracts must be distinguished from cost-plus-percentage-of-cost type contracts which are prohibited as such contracts motivate a supplier, contractor or consultant to increase its profits by increasing cost of performance.

for dispute resolution panels, institutional reforms, procurement advice, technical troubleshooting, and so forth, normally for a period of a year or more.

4.5.2 *Requirements and Blanket Purchase Agreements ("BPA") Contracts.* MCA-Namibia may use these contract types for reoccurring needs.

Important Provisions

4.6 RFPs shall clearly state that firms must express the price for their services in the currency stated in the RFP, which in every case must be either US dollars or the local currency of the Republic of Namibia or a combination thereof. MCA-Namibia may require consultants to state the portion of the price representing costs in the local currency of the Republic of Namibia. Payment under the contract shall be made in the currency or currencies as stated in the RFP.

4.7 Reserved

4.8 *Payment Provisions.* Payment provisions, including amounts to be paid, schedule of payments, and payment procedures, shall be set out in the RFP to the extent possible. Payments may be made at regular intervals, milestones and outputs as described in the RFP and agreed in the contract.

4.9 Except as otherwise stated in any related provision of the Compact and Supplemental Agreements, payments shall be made promptly in accordance with the contract provisions. To that end:

(a) consultants will be paid directly by the Fiscal Agent; and,

(b) the contract shall provide for the payment of interest if payment is delayed beyond the time allowed in the contract due to the fault of MCA-Namibia or its agents; the rate of charges shall be specified in the contract.

4.10 *Bid and Performance Securities.* Bid and performance securities are not always recommended for consultants' services. Their enforcement is often subject to judgment calls, they can be easily abused, and they tend to increase the costs to the consultant industry without evident benefits, which are eventually passed on to MCA-Namibia. However, they can be useful where Compact implementation would be damaged by poor consultant performance.

4.11 Reserved

4.12 *Conflict of Interest.* The consultant shall not receive any remuneration in connection with the assignment except as provided in the contract. The consultant and its affiliates shall not engage in consultant or other activities that conflict with the interest of MCA-Namibia under the contract. The contract shall include provisions limiting future engagement of the consultant or other services resulting from or directly related to the firm's consultant services in accordance with the requirements of Paragraphs 1.9 and 1.10 of Section 1.B of these Rules.

4.13 *Professional Liability.* The consultant is expected to carry out its assignment with due diligence and in accordance with prevailing standards of the profession. As the consultant's liability to MCA-Namibia will be governed by the applicable law, the contract need not deal with

this matter unless the parties wish to limit this liability. If they do so, they should ensure that (a) there must be no such limitation in case of the consultant's gross negligence or willful misconduct; (b) the consultant's liability to MCA-Namibia may in no case be limited to less than a multiplier of the total value of the contract to be indicated in the RFP and in the special conditions of the contract (the amount of such limitation will depend on each specific case);⁵⁴ and (c) any such limitation may deal only with the consultant's liability toward MCA-Namibia and not with the consultant's liability toward third parties.

4.14 Staff Substitution. During an assignment, if substitution is necessary (for example, because of ill health or because a staff member proves to be unsuitable), the consultant shall propose other staff of at least the same level of qualifications for approval by MCA-Namibia.

4.15 Applicable Law and Settlement of Disputes. The contract shall include provisions dealing with the applicable law and the forum for the settlement of disputes. Settlement of disputes shall take place in the Republic of Namibia with the possibility for international arbitration where the parties so agree.

V. SELECTION OF INDIVIDUAL CONSULTANTS

5.1 Individual consultants are employed on assignments for which (a) teams of personnel are not required, (b) additional outside (home office) professional support is not required, and (c) the experience and qualifications of the individual are the paramount requirement. When coordination, administration, or collective responsibility may become difficult because of the number of individuals, it would be advisable to employ a firm.

5.2 Individual consultants are selected on the basis of their qualifications for the assignment. The procurement shall be advertised according to the requirements set out in Paragraphs 2.5.1 and 2.5.2 of Section 1.B and may, at the discretion of MCA-Namibia, be preceded by a shortlisting procedure (see Paragraphs 2.6 to 2.8 of Section 1.B). Consultants do not need to submit proposals but shall be selected through evaluation and comparison of qualifications. Individuals considered for comparison of qualifications shall meet the minimum relevant qualifications and those selected to be contracted by MCA-Namibia shall be the best qualified and shall be fully capable of carrying out the assignment. Capability is judged on the basis of evidence of knowledge and past experience relevant to the services to be provided and past performance based upon references and recommendations.

5.3 From time to time, permanent staff or associates of a consultant firm may be available as individual consultants. In such cases, the conflict of interest provisions described in these Rules shall apply to the parent firm.

5.4 Individual consultants may be selected on a sole-source basis with due justification in exceptional cases such as for: (a) tasks that are a continuation of previous work that the consultant has carried out and for which the consultant was selected competitively; (b) certain assignments with total expected duration of less than six months; (c) emergency situations resulting from natural disasters; and (d) when the individual is the only consultant qualified for the assignment.

⁵⁴ MCA-Namibia is encouraged to secure insurance for potential risks above these limits.

APPENDIX 1: REVIEW BY MCC OF THE SELECTION OF CONSULTANTS

Scheduling the Selection Process

1. If required by the thresholds set forth in Attachment 1 of these Rules, MCC shall review the selection process for the hiring of consultants proposed by MCA-Namibia in the Procurement Plan to ensure compliance with the Compact and the Supplemental Agreements. Each Procurement Plan typically covers a period of at least six months and is updated at least semi-annually. Any revisions proposed to the Procurement Plan shall be furnished to MCC for its prior approval.

Prior Review

The thresholds for review of procurement decisions prior to award of a contract and any modification to such contract are set out in Attachment 1 of these Rules.

Post Review

MCA-Namibia shall retain all documentation with respect to each contract for at least five years after the closing date of the Compact for examination by MCC, its auditors, its oversight authorities and independent auditors of MCA-Namibia. This documentation shall include, but shall not be limited to, the signed original of the contract, the analysis of the respective proposals, and recommendations for award. For contracts awarded on the basis of single-source selection, documentation shall include the record of justification, the qualifications and experience of the consultants, and the signed original of the contract. MCA-Namibia shall also furnish such documentation to MCC upon request. MCC shall, if it determines that the contract was not awarded in accordance with the agreed procedures as reflected in the Compact, including the Supplemental Agreements and further elaborated in the Procurement Plan approved by MCC, or the contract itself is not consistent with such procedures, promptly inform MCA-Namibia that Paragraph 1.17 (Misprocurement) of Section 1.B of these Rules shall apply and state the reasons for such determination.

APPENDIX 2: INSTRUCTIONS TO CONSULTANTS

1. When procuring consultant services, MCA-Namibia shall use MCA-Namibia Standard Solicitation Documents including the Standard Proposal Document accepted by MCC. These documents shall include Instructions to Consultants and TORs providing adequate information on the following aspects of the assignment and the procurement process:

- (a) a description of the assignment;
- (b) standard formats for the technical and financial proposals;
- (c) the names and contact information of officials to whom clarifications shall be addressed and with whom the consultants' representative shall meet, if necessary;
- (d) details of the selection procedure to be followed, including (i) a description of the two-stage process, if appropriate; (ii) a listing of the technical evaluation criteria and weight given to each criterion; (iii) the details of the financial evaluation; (iv) the relative weight given to quality and

price in the case of QCBS; (v) the minimum pass score for quality; and (vi) the details on the public opening of financial proposals;

(e) estimate of the level of key staff inputs (in staff months) required of the consultants or an indicative value of the proposed contract, but generally not both;

(f) indication of minimum experience, academic achievement, and so forth, expected of key staff;

(g) details and status of MCC funding;

(h) information on negotiations; financial and other information that shall be required of the selected firm during negotiation of the contract;

(i) deadline for submission of proposals;

(j) currency(ies) in which the costs of services shall be expressed, compared, and paid;

(k) reference to any local laws that may be particularly relevant to the proposed consultants' contract;

(l) statement that the firm and any of its affiliates shall be disqualified from providing downstream goods, works, consultant or non-consultant services under the Project if, in the judgment of MCA-Namibia or MCC, such activities constitute a conflict of interest with the services provided under the assignment;

(m) method in which the proposal shall be submitted, including the requirement that the technical proposals and financial proposals be sealed and submitted separately in a manner that shall ensure that the technical evaluation is not influenced by price;

(n) request that the invited firm (i) acknowledges receipt of the RFP and (ii) informs MCA-Namibia whether or not it will be submitting a proposal;

(o) if applicable, the short list of consultants being invited to submit proposals and whether or not associations between short-listed consultants are acceptable;

(p) period for which the consultants' proposals shall be held valid and during which the consultants shall undertake to maintain, without change, the proposed key staff, and shall hold to both the rates and total price proposed; in case of extension of the proposal validity period, the right of the consultants not to maintain their proposal;

(q) anticipated date on which the selected consultant shall be expected to commence the assignment;

(r) statement regarding tax liabilities in reference to and accordance with the Compact and the Supplemental Agreements;

(s) details of the services, facilities, equipment, and staff to be provided by MCA-Namibia;

(t) phasing of the assignment, if appropriate; likelihood of follow up assignments;

- (u) procedure to handle clarifications about the information given in the RFP;
- (v) any conditions for subcontracting part of the assignment; and
- (w) notice of Bid Challenge System.

APPENDIX 3: GUIDANCE TO CONSULTANTS

Consultants can find information about the Millennium Challenge Corporation and its programs at www.mcc.gov and about MCC Programs in the Republic of Namibia at the website established by MCA-Namibia (or such other appropriate website designated by MCA-Namibia and approved by MCC).

PART 2. REPORTS AND RECORDS

Complete and uniform procurement records shall be maintained according to a standard format approved by MCC. MCA-Namibia shall also maintain and submit quarterly to MCC a cumulative report of all procurement activity ("*Procurement Performance Report*"), including explanations of any variance from the Procurement Plan, in the format mandated by MCC. The standard form with instructions is found on the MCC website, www.mcc.gov.

PART 3. STANDARD SOLICITATION DOCUMENTS

MCA-Namibia shall develop standard documents to invite quotations, bids, proposals and qualifications ("*Standard Solicitation Documents*") including standard bidding and proposal documents ("*Standard Bidding Documents*" and "*Standard Proposal Documents*"). Any Standard Solicitation Document used to procure contracts valued over US\$100,000 must be available in English and is subject to review and approval by MCC. The instructions to bidders and consultants in Standard Solicitation Documents must set out or reference the rules and procedures governing the procurement. The instructions to bidders and instructions to consultants must also state the currency or currencies for the quotes, bids or financial proposals, as appropriate, and shall specify that payment be made in either United States dollars or the local currency of the Republic of Namibia.

The terms and conditions of procurement contracts shall be set out in the applicable solicitation documents. The terms and conditions shall include a provision stipulating the governing law and the procedures for resolving contract disputes. The term and conditions also shall include provisions as required or specified by these Rules and other Compact documents including provisions that stipulate (a) MCC status and rights; (b) limitations on use or treatment of MCC funding; (c) procurement requirements; (d) records and information, access, audits and reviews, and reports; (e) compliance with rules on prohibited activities, restricted parties, and eligibility requirements of prohibited source provisions in accordance with then-applicable US law, regulations and policy; (f) publicity, information and marketing; (g) insurance requirements; (h) conflict of interest; and (i) inconsistencies, as well as any other terms and conditions as applicable to a contract or agreement of that nature or otherwise as MCA-Namibia, solely upon the written instructions of MCC, may require from time to time. A summary of the applicable provisions described in (a) through (i) of this Section may be found on the MCC website at www.mcc.gov/guidance/compact/general_provisions.pdf. MCC has the right to review and approve any proposed contracts and any material modifications to any executed contract.

PART 4. REVIEW AND APPROVAL REQUIREMENTS

Certain important procurement actions and decisions shall be subject to prior review or approval by levels of authority within MCA-Namibia or by MCC, as provided in Attachment 1 of these Rules. This system of review and approval requirements is intended to ensure adequate oversight and monitoring of MCC-funded procurement activities, help detect errors when they can be easily corrected and to otherwise avoid problems in such procurement activities. It is subject to modification or exception at any time by MCC.

MCA-Namibia shall ensure that all procurement actions described in Attachment 1 for goods, works, consultant and non-consultant services in furtherance of the Compact and funded in whole or in part by MCC funding shall be subject to the prior approval of the authorized entity, officer(s) or bodies designated on Attachment 1 for the corresponding type of action or dollar amount threshold, unless MCC has granted a written exception to the approval requirement set out in Attachment 1.

Notwithstanding the approval requirements set out in Attachment 1, MCC shall have the right to take review and require prior approval of any other procurement action, decision or document.

PART 5. BID CHALLENGE SYSTEM

MCA-Namibia shall establish a bid challenge system that provides suppliers, contractors and consultants the ability to seek review of procurement actions and decisions ("**Bid Challenge System**"). The organization, rules and procedures of such Bid Challenge System shall be subject to MCC approval. The Bid Challenge System must include a first level of review by MCA-Namibia with an appeal to a review body. The review body must be impartial and independent and shall have no interest (through financial, family, business or beneficial ownership or otherwise) in the outcome of the procurement, nor be involved in or related to the procurement process. The review body must follow clear and transparent written procedures and shall issue a timely written decision on any bid challenge that is timely and properly filed. The review body must have the authority to order a correction of a violation of the procurement principles and procedures or to order compensation for loss or damage suffered by a successful challenger, to the extent of the cost of preparation of the bid and the challenge. The review body must also have the power to order suspension of a procurement that is under challenge in order to preserve the commercial opportunity pending the outcome of the review. Notice of the Bid Challenge System must be set out in the solicitation documents. Standard notice provisions shall be subject to MCC approval. MCA-Namibia shall ensure that all bid challenges are accepted, reviewed and processed in accordance with the rules and procedures of the Bid Challenge System as approved by MCC.

PART 6. SUBCONTRACTING

(a) Every contract or subcontract for goods, works, consultant or non-consultant services with any party that receives at least US\$50,000 in the aggregate of MCC funding shall require the contracting party to follow the fundamental procurement principles promoting transparency, openness, competition and fairness to the maximum extent possible, remaining consistent with the objectives and requirements of the contract when subcontracting for goods, works, consultant or non-consultant services.

(b) In every contract or subcontract valued in excess of US\$1,000,000, the contracting party shall be required to have written procurement procedures that may be subject to review by MCA-Namibia and MCC.

(c) Any contractor or subcontractor planning to subcontract for a major item of goods, works, consultant or non-consultant services (deemed major if valued in excess of US\$100,000) shall seek MCA-Namibia's prior written approval of the subcontractor.

PART 7. AMENDMENTS AND EXCEPTIONS

These Rules will be amended, or otherwise modified, from time to time, at MCC's request, to reflect changes in US law, regulations or policy related to the funding of procurements. In addition, these Rules may be amended by written agreement of MCC and MCA-Namibia, and MCA-Namibia will consider in good faith any amendment for the purpose of ensuring continuity and compatibility between these Rules and the MCC Program Procurement Guidelines. On a case by case basis, the MCC may grant a waiver or exception to the Rules. Such waiver or exception must be in writing and shall be effective only to the extent specifically set forth in such writing.

PART 8. PUBLICATION OF MCA-NAMIBIA PROCUREMENT RULES

MCA-Namibia shall ensure that these Rules (including any amendments thereto) are published on MCA-Namibia's website (or such other appropriate website designated by MCA-Namibia and approved by MCC).

MCA-NAMIBIA PROCUREMENT RULES ATTACHMENT 1

APPROVAL REQUIREMENTS

Review of Procurement Decisions: Goods, Works and Non-Consultant Services				
Procurement Procedure or Method	Decision ⁵⁵	Level of Review (Thresholds Expressed in US\$)		
		MCA-Namibia Director of Procurement	Governing Body of MCA-Namibia ⁵⁶	MCC
	Procurement Plans	All	All	All
	Amendments to Procurement Plans	All	Substantial Deviation	All
Pre-qualification	Pre-qualification documents and advertising procedures	All	None	Above 1,000,000
	Report with proposed list of entities qualified	All	Above 500,000	Above 500,000
	Record of Bid Challenges	All	All	All
Competitive Bidding	Bidding Documents	All	None	Above 1,000,000 Goods Above 5,000,000 Works
	Technical Evaluation or Review Report with Proposed Award	All	None	Above 250,000
	Final Contract	All	Above 250,000	Above 250,000
	Record of Bid Challenges	All	All	All
Limited Bidding	Short list	All	None	Above 100,000
	Bidding Documents	All	None	Above 500,000
	Technical Evaluation or Review Report with Proposed Award	All	None	Above 1,000,000
	Final Contract	All	Above 1,000,000	Above 1,000,000
	Record of Bid Challenges	All	All	All

⁵⁵ Within each "procurement Procedure or Method," each separate "Decision" shown is an independent requirement, and all requisite approvals must be received for each such "Decision" before proceeding, sequentially from top to bottom, to the next "Decision" requirement.

⁵⁶ Notwithstanding the thresholds set forth in this Attachment 2 of these Rules with respect to the Governing Body of MCA-Namibia, the Governing Body may exercise its authority to review any procurement decision with prior notice to the principal officer of MCA-Namibia.

Review of Procurement Decisions: Goods, Works and Non-Consultant Services				
Procurement Procedure or Method	Decision	Level of Review (Thresholds Expressed in US\$)		
		MCA-Namibia Director of Procurement	Governing Body of MCA-Namibia	MCC
Shopping	Short list	Over 2,000	None	None
	Record of Purchases	Weekly	Monthly	None
	Record of Bid Challenges	All	All	Quarterly record of decisions
Direct Contracting	Proposed Award	Over 2,000	None	Above 50,000
	Final Contract	Over 2,000 (Under 2,000 review monthly report)	Above 50,000	Above 50,000
	Record of Bid Challenges	All	All	All
Force Account	Selection of using equipment owned by or employees of Government for performing works	All	All	All
	Proposed contract	All	None	All
	Final contract	All	All	All
All Procurement Actions	Contract Modifications and Change Orders	All	For all contract awards approved previously if increases value of Contract by 10% or more, or raises a contract which did not require approval above an approval threshold or if extends Contract original term by 25% or more without value increase.	If increases value of Contract by 10% or more

Review of Procurement Decisions: Consultant Services				
		Level of Review (Thresholds Expressed in US\$)		
Procurement Procedure or Method	Decision	MCA-Namibia Director of Procurement	Governing Body of MCA-Namibia	MCC
	Procurement Plans	All	All	All
	Amendments to Procurement Plans	All	Substantial Deviation	All
Quality and Cost Based Selection	Request for Expression of Interest	All	None	Above 500,000
	Technical Evaluation Panel	All	None	Above 500,000
	Short list	All	None	Above 100,000
	Proposal Documents	All	None	Above 500,000
	Technical Evaluation Report	All	None	Above 100,000
	Proposed Award	All	None	Above 100,000
	Final Contract	All	Above 100,000	Above 100,000
	Record of Bid Challenges	All	All	All
Quality Based Selection and Selection under Fixed Budget	Request for Expression of Interest	All	None	Above 500,000
	Technical Evaluation Panel	All	None	Above 500,000
	Short list	All	None	Above 100,000
	Proposal Documents	All	None	Above 500,000
	Technical Evaluation Report for QBS only	All	None	Above 100,000
	Proposed Award	All	Above 100,000	Above 100,000
	Final Contract	All	Above 100,000	Above 100,000
	Record of Bid Challenges	All	All	All
Least-Cost Selection	Request for Expression of Interest	All	None	None
	Technical Evaluation Panel	All	None	None
	Short list	All	None	Above 100,000

Review of Procurement Decisions: Consultant Services				
Procurement Procedure or Method	Decision	Level of Review (Thresholds Expressed in US\$)		
		MCA-Namibia Director of Procurement	Governing Body of MCA-Namibia	MCC
	Proposal Documents	All	None	None
	Proposed Award	All	None	Above 100,000
	Final Contract	All	Above 100,000	None
	Record of Bid Challenges	All	All	All
Selection Based on Consultant's Qualifications	Request for Expression of Interest	All	None	None
	Technical Evaluation Panel	All	None	None
	Short list	All	None	Above 50,000
	Standard Solicitation Documents	All	None	None
	Technical Evaluation Report	All	None	None
	Proposed Award	All	None	None
	Final Contract	All	Above 50,000	Above 50,000
	Record of Bid Challenges	All	All	All
Single-Source Selection	Proposed Award	All	None	Above 50,000
	Final Contract	All	Above 50,000	Above 50,000
	Record of Bid Challenges	All	All	All
Selection of Individual Consultants	Short list	All	None	Above 50,000
	Technical Evaluation Panel	All	None	Above 50,000
	Technical Evaluation Report	All	None	None
	Proposed Award	All	None	None
	Final Contract	All	Above 50,000	Above 50,000
	Record of Bid Challenges	All	All	All

Review of Procurement Decisions: Consultant Services				
		Level of Review (Thresholds Expressed in US\$)		
Procurement Procedure or Method	Decision	MCA-Namibia Director of Procurement	Governing Body of MCA-Namibia	MCC
All Procurement Actions	Contract Modifications and Change Orders	All	For all contract awards approved previously if increases value of contract, or raises a contract which did not require approval above an approval threshold or if extends contract original term by 25% or more without value increase.	If increases value of contract by 10% or more

MCA-NAMIBIA PROCUREMENT RULES ATTACHMENT 2

GLOSSARY OF TERMS

***Bid Challenge System** shall have the meaning set forth in Part 5.*

***Blanket Purchase Agreement** or **BPA** shall have the meaning set forth in Section 1B, Par. 4.5.2.*

***Consultant's Qualifications** or **CBS** shall have the meaning set forth in Section 1B, Par. 3.7.*

***Compact** means the Millennium Challenge Compact entered into between the United States of America, acting through the Millennium Challenge Corporation, and the Republic of Namibia.*

***Competitive Bidding** or **CB** shall have the meaning set forth in Section 1A, Par. 1.3.*

***Direct Contracting** shall have the meaning set forth in Section 1A, Pars. 3.6 and 3.7.*

***dgMarket** shall have the meaning set forth in Section 1A, Par 2.7.*

***Fixed Budget** or **FBS** shall have the meaning set forth in Section 1B, Par. 3.5.*

***Fixed Price Contract** shall have the meaning set forth in Section 1B, Par. 4.1.*

***Force Account** shall have the meaning set forth in Section 1A, Par.3.8.*

***General Procurement Notice** shall have the meaning set forth in Section 1A, Par. 2.7.*

***Indefinite Delivery and Indefinite Quantity Contract** or **IDIQ Contract** shall have the meaning set forth in Section 1B, Par. 4.5.1.*

***Instructions to Consultants** or **ITC** shall have the meaning set forth in Section 1B, Par. 2.11.*

***Least-Cost Selection** or **LCS** shall have the meaning set forth in Section 1B, Par. 3.6.*

***Letter of Invitation** or **LOI** shall have the meaning set forth in Section 1B, Par. 2.10.*

***Limited Bidding** or **LB** shall have the meaning set forth in Part 1A, Par.3.2.*

***MCA-Namibia** means the National Planning Commission of the Republic of Namibia, in its capacity as the accountable entity responsible to oversee, manage and implement the Program, on behalf of the Republic of Namibia.*

***MCC** means the Millennium Challenge Corporation.*

***MCC Cost Principles** means MCC's "Cost Principles for Cost-Reimbursement Contracts under MCC-Financed Grants" and "Cost Principles for Government Affiliates Involved in MCC Compact Implementation," both located on MCC's website at www.mcc.gov.*

***Performance Based Procurement** or **Output Based Procurement** shall have the meaning set forth in Section 1A, Par. 3.14.*

***Procurement Plan** shall have the meaning set forth in Section 1A, Par. 1.16.1.*

Procurement Performance Report shall have the meaning set forth in Part 2.

Procurement Principles shall have the meaning set forth in Part 1, Preamble.

Quality Based Selection or QBS shall have the meaning set forth in Section 1B, Pars. 3.2 thru 3.2.

Quality Cost Based Selection or QCBS shall have the meaning set forth in Section 1B, Par. 1.5.

Request for Expression of Interest or EOI shall have the meaning set forth in Section 1B, Par. 2.5.2.

Request for Proposals or RFP shall have the meaning set forth in Section 1B, Par. 2.9.

Single-Source Selection or SSS shall have the meaning set forth in Section 1B, Pars. 3.9 thru 3.13.

Shopping shall have the meaning set forth in Section 1A, Par. 3.5.

Specific Procurement Notice shall have the meaning set forth in Section 1A, Par. 2.8 and Section 1B, Par. 2.5.2.

Standard Bidding Documents shall have the meaning set forth in Part 3.

Standard Proposal Documents shall have the meaning set forth in Part 3.

Standard Solicitation Documents shall have the meaning set forth in Part 3.

Supplemental Agreement shall have the meaning set forth in Section 1A, Par. 3.10.

Terms of Reference or TOR shall have the meaning set forth in Section 1B, Par. 2.3.

Time-Based Contract shall have the meaning set forth in Section 1B, Par. 4.2.

Two-Stage Bidding shall have the meaning set forth in Section 1A, Par. 2.6.

UNDB Online shall have the meaning set forth in Section 1A, Par. 2.7.